157-198

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 100.

JACOB MICHELS, APPELLANT,

vs.

GEORGE P. OLMSTEAD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED MARCH 9, 1891.

(14,515.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 12, 1894.

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1 UNITED STATES OF AMERICA, *sct:*

To George P. Olmstead, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western division of the western district of Missouri, wherein Jacob Michels is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John F. Philips, judge of the circuit court of the United States for the western division of the western district of Missouri, this 2nd day of November, in the year of our Lord one thousand eight hundred and ninety.

JNO. F. PHILIPS, *Judge.*

2 UNITED STATES OF AMERICA, } *ss:*
Western District of Missouri, }

We hereby acknowledge due service of the within citation this — day of November, A. D. 1890.

PEAK, YEAGER & BALL,
Attorney for Appellees.

[Endorsed:] United States circuit court, western district of Missouri, western division. —— —— *vs.* —— ——. Citation. Filed ——, 188–. —— ——, clerk.

3 UNITED STATES OF AMERICA, *sct:*

Be it remembered that heretofore, to wit, on the twenty-seventh day of October, A. D. 1886, a bill of complaint was filed in the office of the clerk of the circuit court of the United States for the western division of the western district of Missouri, wherein George P. Olmstead is complainant and Jacob Michels is defendant.

Said bill of complaint is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri. In Chancery.

To the honorable judges of the circuit court of the United States for the western division of Missouri:

George P. Olmstead, a citizen of the State of Missouri, *under* the western division of the western district of said State, brings his bill of complaint against Jacob Michels, a citizen of the State of Michigan; and thereupon your orator showeth to your honors—

That on the 5th day of March, A. D. 1881, the defendant, of the first part, and your orator, of the second part, entered into a contract and agreement in writing in words and figures as follows, to wit:

Memoranda of agreement made and entered into this fifth day of March A. D. one thousand eight hundred and eighty-one, by and between Jacob Michels of the city of Detroit, county of Wayne and State of Michigan, party of the first part, and George P. Olmstead of the city of Kansas City, county of Jackson and State of
4 Missouri, party of the second part, whereby it is mutually agreed as follows, to wit: That the party of the first part will furnish to the party of the second part all necessary machinery for manufacturing corn into syrup (commonly called glucose) by a dry process, so termed. Said machinery shall be of a sufficient capacity to manufacture two thousand bushels of Indian corn into the above-mentioned syrups per day (of 24 hours) the said party shall set said machinery in a proper manner and ready for operation in a building to be furnished by the party of the second part, as hereafter provided.

The party of the first part shall furnish a manufacturing expert to start said works and hereby guarantees the said machinery shall have a capacity as above stated, and shall produce a yield of 32 pounds of syrup per bushel of corn. After said works have been put in operation, the party of the first part, shall furnish the party of the second part, an expert, or manufacturing superintendent for as — a time as the company want the services of said expert and a failure forfeits the interests of the first part- from the time the said works are in successful operation and goods produces as guaranteed, and the party of the second part shall pay to the party of the first part a salary at the rate of seven thousand dollars per year said salary to be paid monthly to the party of the first part or to his order.

The party of the second part will furnish to the party of the first part suitable buildings to place said machinery in and shall also furnish all brick and stone work, foundations, supports and also a suitable chimney, also a suitable water supply, all of which shall be located at Kansas City, Mo.

5 For the said machinery and setting up of the same and guaranteeing yields as before specified, the party of the second part shall pay to the party of the first part the sum of eighty-one thousand one hundred and sixty dollars ($81,160.00) to be paid as follows, to wit, fifteen per cent. of the whole amount to be paid to the party of the first part on demand, and fifty per cent. of the whole amount shall be paid as soon as all the machinery arrives at Kansas City, Mo. But should a part of said machinery arrive at Kansas City Mo. in advance of other parts a like per cent. shall be paid upon said machinery in accordance with a schedule price hereunto attached.

The party of the second part shall furnish all materials and labor required by the party of the first part to start said works. Such as corn, coal, boneblack, filter cloths, oils, chemicals, labor &c. and the manufacturing superintendent (or expert) shall at all times have exclusive control of said works.

The party of the first part shall not receive any further pay than is above stated, and a failure to produce a yield as above specified shall forfeit the balance due the party of the first part.

But when said guarantee shall be fulfilled then the party of the second part shall pay to the party of the first part the remaining 35 per cent. as follows, to wit, a twenty per cent. interest in the said works, and balance in cash

The syrup made shall be of a density of 40 degrees by a Be-ume saccharometer scale.

J. MICHELS.
GEO. P. OLMSTEAD.

Said schedule referred to and attached to said contract was
6 in the words and figures following, to wit:

5	boilers 60″ x 16′, 53 4″ ea., with all appendage-, complete and set up	$7,537 50
3	engines complete & set up, 2 16 x 24, 1 12 x 18	3,550 00
12	run of stone, with fixtures, complete	5,500 00
8	*bottling* chests, clothed, complete	4,370 00
	Main line shafting	320 00
	Flange couplings for same	256 00
	Pillon-block journal, bearings for same	400 00
	Line shafting	328 50
	Hangers, pedestals, & journal bearings	359 59
	Compression couplings	160 00
4	pulleys, 84 x 10	313 91
4	" 30 x 10	60 00
12	" 24 x 10	131 58
8	" 72 x 10	559 62
4	" 36 x 10	148 40
32	" 24 x 5½	239 68
8	" 30 x 7	80 16
1	" 48 x 8	34 00
1	" 20 x 8	8 50
1	" 12 x 8	4 84
1	" 30 x 8	14 06
1	" 24 x 8	10 09
20	" 24 x 5½	167 73
10	" 20 x 10	102 60
24	pairs miter gears	163 42
10	counter-shafts	70 00
	20 pedestals	90 00
7	20 *ship* collars	20 00
	10 pair bevel gears	150 00
	Amount forward	25,150 18
	Elevator buckets	86 00
	All belting	858 00
	Platform elevator	985 00
	All co-veyors	96 00
4	first convertors, complete	2,300 00
	One open evaporator	975 00
4	high-pressure convertors	4,680 00
4	neutralizers	1,520 00

40 first filters	$3,400 00
2 sweet-water *califiers*	625 00
2 vacuum pans	9,300 00
2 filter pressers	1,760 00
2 coolers or mixers	1,196 00
3 cold-water pumps	1,550 00
1 sweet-water pump	255 00
1 boiler feed pump	310 00
1 syrup pump	215 00
8 boneblack filters	3,450 00
2 boneblack receivers	820 00
1 boneblack truck	285 00
1 boneblack elevator, all iron	1,750 00
Amou-t forward	
2 meal trucks	258 00
1 platform scale	94 00
1 scale for chemical	62 00
Hopper and lead pipe	855 00
8 Cast-iron pipe	263 00
Wrought-iron pipe	2,527 00
Globe valves	1,685 00
1 bone coal retort	3,300 00
1 Potter press	1,700 00
5 water tanks	750 00
Bolts, nails, lumber, screws, &c	300 00
Freight, &c	1,800 00
Setting machinery, insurance, &c	6,000 00
	81,160 18

That said original contract and schedule are now on file with your orator's answer to a suit at law now pending in this court, wherein defendant is plaintiff and your orator is defendant, wherein defendant sues your orator to recover from him the sum of thirty thousand dollars for his failure to keep and perform said contract on his part. By the terms of said contract defendant bound himself to furnish and set up and put in operation in a suitable building to be furnished by your orator in the city of Kansas, in the State of Missouri, all the necessary machinery for manufacturing syrup, commonly called glucose, from Indian corn by dry process, of sufficient capacity to manufacture two thousand bushels of corn into syrup each day of twenty-four hours, and the defendant further agreeing and guaranteeing to your orator that such machinery so to be furnished and put in operation should by said process produce a yield of thirty-two pounds of syrup from each bushel of corn, and that the syrup so produced should be of forty-two degrees density of a Beaume saccharometer, and also to furnish, at a salary in said contract stated, an expert
9 to manage said manufactory as long as required by the company or corporation which your orator and other- asso

ciated with him were then about to organize, the building to be furnished by your orator for the above purpose with a suitable water supply and your orator to furnish all brick and stone work, foundations, supports, and a suitable chimney, and also all materials and labor required to start said works in operation, such as corn, coal, boneblack, filter cloths, chemicals, and labor, and on the part of your orator that he should pay therefor to the defendant the sum of eighty-one thousand one hundred and sicty dollars, fifteen per cent. thereof when demanded by defendant and fifty per cent. thereof on the arrival of said machinery at said Kansas City, Missouri, or in case a part of said machinery should arrive at said Kansas City in advance of other parts of said machinery that in that case your orator should pay on the arrival of such parts a sum which should bear the same ratio to the whole fifty per cent. of said cost price as the value of the part so arriving should bear to the value of the entire machinery as such values were fixed by said schedule attached to said contract; and your orator states that it is true that he did not keep and perform on his part any of the terms or stipulation of said contract contained for the reason that said contract and your orator's signature were obtained by defendant by false and fraudulent representations made by defendant to your orator for the purpose of inducing your orator to sign said contract, whereby your orator was deceived and misled and induced to execute said contract in the manner following: On or before said fifth day of March, 1881, and before the execution of said contract the defendant, for the purpose of cheating and defrauding your orator and of inducing him to sign said contract and of obtaining from him a grossly extortionate price for the machinery and work of said contract and schedule mentioned, falsely and fraudulently represented and pretended to your orator that there was a certain process of manufacturing syrup from corn known as the dry process, whereby syrup could be manfactured from corn to much greater profit and advantage, at much less expense in machinery and labor, and in much greater quantity in proportion to the amount of corn consumed than could be done by the usual course and process of manufacturing sugar from corn or by any process known to any person except defendant and his agents; that said process was a secret known only to defendant and two other persons, one Rogers and one Stebbins, who were agents of defendant; that defendant could and would furnish to your orator the machinery mentioned in said contract and schedule which would, when put in operation by defendant, produce syrup from corn by said dry process to such great benefit and advantage, and that the prices named in said contract and schedule were the lowest prices at which like machinery could be purchased from manufacturers thereof, and that these prices were in fact so low that defendant would have no profit arriving therefrom, and would therefore be willing at any time to permit defendant to procure any of said machinery from any other source and release him from any obligation he might be under to take the same under said contract, and informed defendant that he did not and never had designed or proposed to en-

gage in the business of manufacturing syrup individually,
11 but only as a member of a proposed corporation which he, your orator, and several other persons contemplated forming, and as an agent or committee for whom he was then negotiating with defendant, as defendant well knew, said defendant represented to and promised your orator that if he would execute said contract he, defendant, would permit your orator to witness with his own eyes the operation heretofore unseen by any person except defendant and his said agents, Rogers and Stebbins, of manufacturing syrups from corn by the dry process, and that if, having seen it, your orator could return and report to said persons proposing to join with him in forming said corporation that defendant's representations regarding the dry process were true, and that your orator had seen the same in successful operation and could thereby accomplish the formation and organization of said corporation, that then the terms contained in said contract and schedule might be taken and considered as the basis of a contract to be made between defendant and said corporation and as a proposition on the part of defendant which said corporation might adopt, and that on condition said corporation should be formed and organized and should as such corporation adopt said contract, then in that event said contract should be binding and obligatory upon said corporation and defendant; but that in no event should said contract be binding or obligatory upon your orator, and in no event should orator be individually bound and held to the performance of anything therein contained; and your orator states that under no circumstances and conditions would he have signed said contract unless he had been positively assured by defendant that he should not be individu-
12 ally held by the terms and conditions thereof; and your orator states that, relying upon said representations and promises of defendant and deceived and misled thereby, he did execute said contract; and your orator states that said representations of defendant and each and all of them *was* untrue and known to defendant to be false when he so made them; that there was no such dry process in existence whereby syrup could be made from corn to the profit and advantage stated by defendant or to any profit whatever, and that, although syrup can be made from a dry process of a very inferior quality and to no profit whatever, said process was no secret, but the same was well known and understood to all persons familiar with the business of making syrup from corn, and it was not true that the prices of machinery stated in said contract and schedule were the usual manufacturers' prices for like machinery, but that the same were greater then the usual manufacturers' prices, as defendant well knew when he made said representations, and that defendant's said representations that his design and intention in having said contract signed for the sole purpose of enabling your orator to see and witness the operation of said dry process and report the success thereof to his associates who, with him, were contemplating the formation of said corporation, and thereby promoting and insuring the organization of said corporation, and that said contract should only be held to be signed and delivered for that purpose

and not as a binding contract on the part of your orator, was likewise a false pretense and device of defendant whereby he sought and intended to procure your orator's signature to said contract with the full intention of holding him bound thereby and of extorting of him a large sum of money; and your orator states
13 that defendant well knew at the time of making all of — representations that there was in existence no dry process whereby syrup could be made from corn to any profit whatever, and that by the use of said machinery mentioned in said contract and schedule syrup could not be manufactured of any value or to any profit whatever, and the sold object of defendant in making said representations and pretences was to induce your orator to rely upon and believe them and sign said contract and thereby become bound to pay to defendant the sum of money grossly in excess of the real value and cost of said machinery, and thereby to obtain a large gain and profit from your orator.

And your orator states that soon after the making of said contract it was discovered by your orator and his associates, who were proposing with him to join in forming said corporation, that the aforesaid representations made by defendant to your orator were false, and that there was no dry process whereby syrup could be made from corn of any value or to any profit, and that defendant's said pretended dry process was an entire failure and had long been known to and understood by all persons skilled in the manufacture of syrup from corn, and that the machinery mentioned in said contract and schedule if furnished and put in operation as provided for would prove a total loss and failure, and that the prices of machinery mentioned in said contract were grossly and outrageously extortionate and excessive, and therefore defendant and his said associates refused to further entertain their proposition to organize said corporation and did not organize the same, and your orator disavowed and refused to carry out said contract or any part thereof, and your orator states that the defendant, in pursuance of his said design to cheat, defraud, and swindle your orator and to
14 fraudulently extort from him a large sum of money, and, contrary to his express promise and agreement not to hold your orator individually bound by the terms of said contract, has instituted suit against your orator upon said contract upon the law side of this honorable court, wherein he asks and demands of your orator the sum of thirty thousand dollars as damages for his failure to comply with the terms of said contract. Said cause is now pending in said court and is marked and numbered upon the docket thereof as number 393.

Your orator states that it would be grossly inequitable, unjust, and oppressive to permit the defendant to prosecute his said action against your orator upon said contract and to obtain a judgment at law against your orator thereon.

And your orator states that he is advised that his defense against the enforcement of said contract is one which cannot be made or presented in a proceeding at law, and that unless the defendant is restrained and enjoined from the prosecution of his said contract in

said court he will succeed in obtaining a judgment in said court against your orator for a large sum of money, to the irreparable damage, injury, and oppression of your orator.

In consideration whereof and forasmuch as your orator is without any full, complete, and adequate remedy at law, and can only have relief in — court of equity, where matters of this kind are cognizable and relievable, to the end, therefore, that said defendant may, if he can, show why your orator should not have the *the* relief he herein prays — may answer this bill, but not under his oath, which is hereby expressly waived, your orator prays that defendant be en-
15 joined and restrained from further prosecuting said suit or in any manner attempting to enforce said contract against your orator until the further hearing of this cause, and that upon a final hearing defendant be permanently enjoined and restrained from further prosecuting said suit or in any manner enforcing said contract against your orator, and that said contract be decreed and declared null and void and for naught held, and for such further relief in the premises as the nature of this case shall require and to your honors shall seem meet.

May it please your honors to grant unto your orator a writ of subpœna of the United States of America, to be directed to said defendant, Jacob Michels, commanding him, at a certain day and under a certain penalty, to be and appear before your honors in this honorable court and then and there to answer to all and singular the premises and to stand to, perform, and abide such order and decree therein as to your honors shall seem meet.

GEO. P. OLMSTEAD.
JOHN L. PEAK, *Solicitor.*

PEAK, YEAGER & BALL AND
GAGE, LADD & SMALL,
Of Counsel.

Thereupon, upon said 27th day of October, 1886, the following order was filed and entered upon the records of said court, to wit:

16 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

GEORGE P. OLMSTEAD
vs.
JACOB MICHELS. } In Equity.

Now, at this day, comes the complainant and files his bill of complaint against the defendant in this cause, wherein he prays that the defendant may be restrained and enjoined from the further prosecution of a certain legal proceeding against the complainant upon the law side of this court, in which said legal proceeding the defendant herein is plaintiff and the complainant herein is defendant, said cause being docketed No. 393 upon the docket of this court until this case can be heard and determined by the court, and that after the final hearing of this cause said defendant, his agents and attor-

neys, may be perpetually restrained and enjoined from the prosecution of said cause and for a cancellation of the instrument or contract upon which said proceeding at law is based, and, said bill of complaint having been heard and read by the court, on motion of J. L. Peak, solicitor for the complainant, the defendant appearing by counsel, it is ordered that the defendant show cause, at the next term of this court, to be held at Kansas City, Missouri, on the 3rd Monday in May next, why a general injunction should not issue against him as prayed for by said bill of complaint, and in the meantime, the complainant having filed herein a bond with two good and sufficient sureties approved by the court in the sum of five thousand dollars to secure the defendant against costs and damages which may result to him from the granting of this injunc-
17 tion, it is ordered that a temporary injunction be issued in this cause according to the prayer of said bill of complaint, and thereupon the defendant, by his counsel, in open court, waives the issue and service upon him of a writ of injunction in accordance with this order.

(Signed) A. KREKEL, *Judge.*

And afterwards, to wit, on Monday, December 6th, A. D. 1890, the following entry was made of record in said cause, to wit:

GEO. P. OLMSTEAD
against } 1230.
JACOB MICHELS.

This day comes defendant, by his solicitor, and files appearance and waiver of the writ of subpœna herein.

Said appearance is in words and figures as follows:

In the Circuit Court of the United States in and for the Western Division of the Western District of Missouri.

GEORGE P. OLMSTEAD
against }
JACOB MICHELS.

Now comes defendant, waives the issuing and service of a subpœna herein, and enters herein his appearance.

JACOB MICHELS,
By C. O. TICHENOR,
Solicitors for Respondent.

18 And afterwards, to wit, on Monday, January 24th, 1887, the following entry was made of record, to wit:

GEORGE P. OLMSTEAD
against } 1230.
JACOB MICHELS.

This day a stipulation of parties is filed as to the time for defendant to file answer herein; also comes defendant, by his solicitor, C. O. Tichenor, Esq., and files answer.

Said stipulation is in words and figures as follows, to wit:

In the United States Circuit Court in and for the Western Division, Western District of Mo.

GEORGE P. OLMSTEAD
vs.
JACOB MICHELS.

It is stipulated that defendant may have until January 25, 1887, to file his answer herein.

Dec. 29, 1886.

PEAK, YEAGER & BALL,
Att'ys of Pl'ff.

Said answer is in words and figures as follows, to wit:

In the U. S. Circuit Court in and for the Western Division of the Western District of Missouri.

GEORGE P. OLMSTEAD
versus
JACOB MICHELS.

Defendant admits that plaintiff was and is a citizen of Missouri and that he was and is a citizen of Michigan. Defendant also admits that he and plaintiff entered into a contract in writing March 5, 1881, which is correctly copied (excepting a few errors) in the bill, and defendant admits that the schedule referred to in
19 said contract is correctly copied (excepting a few errors) into said bill. Defendant admits that both said contract and said schedule are filed with the pleadings in a certain suit in this court wherein defendant is suing plaintiff for a breach of said contract.

Defendant says at the date of said contract and for a long time prior thereto he was a practical machinist having works in the city of Detroit, Michigan, for the manufacturing of machinery of different kinds. Defendant denies that he ever made any false or fraudulent representations to plaintiff of any kind whatsoever, either for the purpose of inducing plaintiff to enter into said contract or otherwise, and he denies that plaintiff was deceived or misled in any way by defendant.

Defendant denies that he represented to plaintiff for the purpose of cheating or defrauding him or of obtaining from him a grossly extortionate price for machinery or work in said schedule mentioned, or that he represented at all that there was a certain process of manufacturing syrups from corn known as the dry process, and he denies that he falsely or fraudulently represented or pretended or that he represented or pretended at all that by such process syrup could be manufactured from corn by said process to much or greater profit or advantage in much shorter time or at much less expense in machinery or labor or in much greater quantity in proportion to the corn consumed than could be done by any process known to any person except defendant and his agents.

Defendant says that syrup could be made from corn at that time by what is known as the dry process, and that he simply represented what was embodied in said contract, namely, that he would build the said works so that they would yield 32 pounds of syrup per bushel of corn and of the density of 42 degrees, and in
20 said contract he agreed to forfeit a very large sum of the contract price should such a yield be not produced; and defendant denies that he represented that the dry process was a secret known to defendant and no other person, and he denies that he represented that it was a secret at all, and he denies that he represented that the machinery to be furnished when completed would produce syrup from corn by said dry process to a great benefit or advantage, and he denies that he represented that the prices named in the contract and schedule were the lowest prices at which said machinery could be purchased from the manufacturers thereof, or that they were so defendant would have no profit from the same, or that he would be willing to permit defendant to procure any of said machinery from any other source, or that he would release plaintiff from any obligation he might be under to take the same under said contract, and defendant denies that he at any time refused to enter into said contract or that he informed defendant that he did not or that he never had designed or proposed to engage in the business of manufacturing syrup, but only as a member of a proposed corporation; and he denies that plaintiff represented himself to be the agent of committee of persons contemplating forming a corporation, and defendant denies that he knew this, and defendant denies that he represented or promised plaintiff that if he would execute the contract he would permit plaintiff to witness the operation of manufacturing syrup from corn by the dry process, and he denies that he said that plaintiff having seen it could return and report to any person whomsoever that defendant's representations were true or that he could thereby accomplish the formation or an organi-
21 zation of a corporation, and he denies that he said that the terms contained in said contract and said schedule or either or both of them might be taken or considered as the basis on a contract to be made between defendant and a corporation, or that they or either of them were to be considered as a proposition on the part of the defendant; and he denies that he stated that said corporation might adopt said contract or that it was represented by him or understood that said contract was to be binding only on condition that such a corporation should be formed or in case said corporation should adopt said contract or that said contract should be binding on said corporation and defendant, and he denies that said contract was in no event to be binding or obligatory on plaintiff or that in no event should plaintiff be indicidually bound or held to the performance of anything therein contained, but on the contrary defendant charges the fact to be that said contract was designed by both plaintiff and defendant to be exactly what it is, a contract, full and complete in itself and binding upon plaintiff and defendant and upon no one else; that it was to take effect at the time it was executed by plaintiff and defendant.

Defendant denies that plaintiff was either deceived or misled by any representations of his; denies that he made any representations to plaintiff, and he denies that plaintiff signed the contract by reason of any representations whatsoever.

Defendant denies that syrup could not be made at a profit by the dry process, and he denies that it could only be made of an inferior quality by said process, and he denies that there was no secret concerning said process; denies that it was well known or
22 understood by all persons familiar with the business of making syrup from corn.

Defendant denies that there was any pretense or device used by him to get plaintiff into said contract or that he entered into the contract for the purpose of extorting money from the plaintiff, but that on the contrary he entered into the same in good faith and fully intended to live up to its terms on his part, and believed when he did so that plaintiff in like manner would do as agreed. Defendant denies that there was no dry process in existence whereby syrup could be made from corn to any profit, or that by the use of the machinery mentioned in the contract syrup could not be manufactured of any value or profit, and he denies again that he made any representations in the premises at all, either to induce plaintiff to sign the contract at all; denies that plaintiff ever discovered that he had made false representations to him or that plaintiff ever discovered that syrup could *could* not be made of value or profit from corn by the dry process; denies that said process was a failure or that it was known to be so, and he denies that said machinery referred to in the contract, if furnished, would be of no value or would be a total loss, and he denies that the prices of the machinery were grossly or at all extortionate, and he denies that it was for any such reasons that a corporation failed to be organized. Defendant admits that he has sued on said contract for the breach thereof, but he denies that he has done so contrary to any understanding or agreement or through any bad faith, and he denies that it would be inequitable, unjust, and oppressive to allow defendant to pro-
23 ceed with his suit, and defendant says again said contract was made on his part in good faith and as a business transaction, and alleges that all the charges of fraud set forth in plaintiff's petition to be an afterthought, gotten up by plaintiff to escape from the consequences of violation of said contract so entered into in good faith by the parties thereto.

Defendant says his damages by reason of the refusal of plaintiff to carry out the aforesaid contract are $21,000, as he will be able to prove.

Defendant submits that plaintiff has not in his bill shown any case in equity or case entitling him to proceed against defendant in this court, and prays all such benefit as if he had demurred to said bill, and he humbly prays to be hence dismissed with his reasonable costs and charges in this behalf wrongfully sustained.

C. O. TICHENOR,
Solicitor of Defendant.

STATE OF MICHIGAN, } ss:
County of Wayne, }

Jacob Michels personally appeared before me, Alfred Lucking, notary public, and made oath: that he had heard read the above answer and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated to be on his information and belief, and as to those matters he believes them to be true.

J. MICHELS.

Subscribed and sworn to before me Jan. 17, 1887.

ALFRED LUCKING,
Notary Public, Wayne Co., Mich.

24 STATE OF MICHIGAN, } ss:
County of Wayne, }

Jacob Michels personally appeared before me, John D. Conely, a notary public in and for said county of Wayne, and made oath that he has heard read the above answer and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated to be on his information and belief, and as to those matters he believes them to be true.

J. MICHELS.

Subscribed and sworn to before me this 21st day of January, A. D. 1887.

[SEAL.] JNO. D. CONELY,
Notary Public in and for the County of Wayne and State of Michigan.

Afterwards, to wit, on Friday, October 26th, 1888, and at the regular October term of said court, the following entry was made of record, to wit:

GEO. P. OLMSTEAD } 1230.
ag'st
JACOB MICHELS. }

This day come the parties, by their solicitors, and this cause coming on for final hearing the same is argued by counsel and submitted to the court and by the court taken under advisement.

And afterwards, to wit, on Tuesday, October 30th, A. D. 1888, the following entry was made of record in said cause, to wit:

25 GEO. P. OLMSTEAD } 1230.
against
JACOB MICHELS. }

This day a decree is ordered for complainant herein.

And on Thursday, November 1st, A. D. 1888, the following entry was made of record in said cause, to wit:

GEORGE P. OLMSTEAD
against } 1230.
JACOB MICHELS.

The following decree was this day filed and ordered to be recorded:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri, at Kansas City, Missouri.

GEORGE P. OLMSTEAD, Plaintiff,
v. } in Equity.
JACOB MICHELS, Defendant.

This cause came on at this term and was argued by John L. Peak and John C. Gage, counsel for plaintiff, and C. O. Tichenor, counsel for defendant; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, to wit: That the said contract in the complaint mentioned between George P. Olmstead, the complainant, and Jacob Michaels, the defendant, dated the 5th day of March, 1881, be, and is hereby, declared to be null, void, and of no effect, and that the said defendant deliver the same up in court here to be cancelled, and that the injunction heretofore granted restraining and enjoining the said defendant from the prosecu-
26 tion of the suit at law in the complaint mentioned, wherein said defendant, Jacob Michels, is plaintiff and George P. Olmstead, the complainant herein, is defendant, pending in this court, the said suit being numbered 393 on the law docket of this court, be made perpetual, and the said defendant be enjoined and restrained from any further prosecution thereof.

(Signed) JNO. F. PHILIPS, *Judge.*

27 And on the 29th day of October, 1890, a prayer for appeal was filed in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

GEORGE P. OLMSTEAD
ag'st } 1230.
JACOB MICHELS.

This day comes the defendant and prays the court to allow an appeal from the decree of this court to the Supreme Court of the United States and tenders a bond for said appeal in the sum of three hundred dollars; and said defendant alleges that the application for an appeal in this cause is not made for vexation or delay, but because he is assured that error has been committed greatly to his injury in the rendering of said decree, which can only be cor-

rected by an appeal to the Supreme Court of the United States; that the appeal prayed *foes* not in any manner injure or affect the plaintiff unless the judgment of the Supreme Court shall be in favor of said defendant, the appellant herein, and therefore, as there is nothing to supercede in the decree, said defendant asks that the bond herein be fixed at three hundred dollars.

JACOB MICHELS.

CONNELLY, MAYBURY & LUCKING,
Att'ys for Defendant.

Thereupon the following order was filed and entered of record:

28 UNITED STATES OF AMERICA, *set:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

GEORGE P. OLMSTEAD
ag'st } 1230.
JACOB MICHELS.

WEDNESDAY, *October 29th*, 1890.

The petition for appeal from the judgment and decree of this court to the Supreme Court of the United States by the above-named defendant having been read and filed, and the bond for appeal in the sum of three hundred dollars, with Edward H. Rolfs and Charles F. Mellus as sureties thereon, having been filed and duly approved, it is ordered that an appeal be granted to the Supreme Court in the above cause as prayed.

(Signed) JNO. F. PHILIPS,
U. S. Dist. Judge.

29 Said bond for appeal is in words and figures as follows:

Know all men by these presents that we, Jacob Michels, of Detroit, Michigan, as principal, and Edward H. Rolfs and Charles F. Mellus, of Detroit, Michigan, as sureties, are held and firmly bound unto George P. Olmstead, of Kansas City, Missouri, in the sum of three hundred dollars ($300.00), lawful money of the United States; to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 25th day of October, 1890.

Whereas a decree has been rendered by the circuit court of the United States for the western district of Missouri, in equity, against the said Jacob Michels and in favor of the said George P. Olmstead, in a cause wherein the said George P. Olmstead is complainant and the said Jacob Michels is defendant, which decree was rendered on the 1st day of November, 1888; and whereas the said Jacob Michels considers himself aggrieved by the said decree and is about to appeal the said cause to the Supreme Court of the United States:

Now, therefore, the condition of this obligation is that if the said Jacob Michels, appellant, shall prosecute his said appeal to effect and pay the amount of costs rendered by the decree of the Supreme Court in the said cause, then its obligation shall be void; otherwise of full force.

JACOB MICHELS. [SEAL.]
EDWARD H. ROLFS. [SEAL.]
CHAS. F. MELLUS. [SEAL.]

30 STATE OF MICHIGAN, } ss:
Wayne County, }

Edward H. Rolfs and Charles F. Mellus, the sureties within named, being duly sworn, each for himself says that he is a freeholder of said county, and that he is worth in property liable to execution, over and above all debts and exemptions, upwards of one thousand dollars.

EDWARD H. ROLFS.
CHAS. F. MELLUS.

Subscribed and sworn to before me Oct. 25, 1890.

[SEAL.] DURBIN NEWTON,
Notary Public, Wayne Co., Mich.

STATE OF MICHIGAN, }
County of Wayne. }

I, William P. Lane, clerk of said county and clerk of the county court for the county of Wayne, which is a court of record, having a seal, do hereby certify that Durbin Newton, whose name is subscribed to the jurat of the annexed instrument and therein written, was at the time of taking such jurat a notary public in and for said county, duly commissioned and qualified and duly authorized to take the same; and, further, that I am well acquainted with the handwriting of such notary public and verily believe that the signature to the said jurat is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said court and county, at Detroit, this 25th day of Oct., A. D. 1890.

[SEAL.] WM. P. LANE, *Clerk,*
By CHAS. C. KELLOGG,
Deputy Clerk.

31 On the 26th day of August, 1888, a stipulation was filed in words and figures as follows:

In the Circuit Court of the United States in and for the Western District of Missouri, at Kansas City.

GEORGE P. OLMSTEAD
v.
JACOB MICHELS.

It is stipulated in the above cause as follows:

First. The evidence taken by reporter in the case between said parties in this court at law may be written out and used by either party; each may file so much as he chooses, but the whole testimony of each witness must be filed in case it is filed.

Second. The depositions and exhibits taken in said case may be read, or of such witnesses as either party may choose to read, and in case an appeal is taken by either party to the Supreme Court the clerk will copy such testimony as may be read into the transcript.

Third. Either party may read in evidence or file copies thereof any documentary evidence which was read in said cause at law and all the papers in said case.

Fourt-. The testimony of L. R. Moore, taken May 10, 1888, may be filed by plaintiff.

PEAK, YEAGER & BALL &
GAGE, LADD & SMALL,
Att'ys for Pl'ff.
C. O. TICHENOR,
For Defendant.

32 In the Circuit Court of the United States for the Western Division of the Western District of Missouri, at Kansas City, Missouri, October Term, 1888.

GEO. P. OLMSTEAD
vs. No. 1230.
JACOB MICHELS

Plaintiff's Abstract of Evidence.

The following is a copy of the petition, answer, reply and exhibits in the suit at law in this court, which plaintiff seeks to enjoin:

Petition.

In the United States Court for the Western Division of the Western District of Missouri.

JACOB MICHELS
against
GEORGE P. OLMSTEAD.

Plaintiff states that at the dates hereinafter mentioned he was and still is a citizen and resident of the State of Michigan, and that de-

fendant is a citizen and resident of the State of Missouri and
33 of the western division of the western district of Missouri, and that the matter in dispute between him and defendant exceeds the sum of five hundred dollars.

Plaintiff states that on the 5th day of March, 1881, he and defendant entered into a contract in writing, which said contract was signed by each, and is in words and figures as follows:

Memoranda of agreement made and entered into this 5th day of March, A. D. 1881, by and between Jacob Michels, of the city of Detroit, county of Wayne, State of Michigan, party of the first part, and George P. Olmstead, of the city of Kansas City, county of Jackson, and State of Missouri, party of the second part, whereby it is mutually agreed as follows, to wit: that the party of the first part will furnish to the party of the second part all necessary machinery for manufacturing corn into syrup (commonly called glucose) by a dry process so termed; said machinery shall be of a sufficient capacity to manufacture two thousand bushels of Indian corn into the above-mentioned syrup per day of twenty-four hours. The said party shall set said machinery in a proper manner and ready for operation in a building to be furnished by the party of the second part as hereafter provided. The party of the first part shall furnish a manufacturing expert to start said works, and hereby guarantees that the said machinery shall have a capacity as above stated, and shall produce a yield of thirty-two pounds of syrup per bushel of corn. After said works have been put into operation the party of the first part shall furnish the party of the second part an expert or manufacturing superintendent for such a time as the company want the services of said expert, at least five years, and — for the interest of the first part from the time said works are in successful operation and goods produced as guaranteed, and the party of the second part shall pay to the party of the first part a salary of
34 seven thousand dollars per year, said salary to be paid to the party of the first part monthly, or to his order.

The party of the second part will furnish to the party of the first part suitable buildings to place said machinery in, and shall also furnish all brick and stone work, foundation supports, &c.; also a suitable chimney, also a suitable water supply, all of which shall be located at Kansas City, Mo.

For the said machinery, and the setting up of the same, and guaranteeing yield as before specified, the party of the second part shall pay to the party of the first part the sum of eighty-one thousand one hundred and sixty dollars ($81,160.00), to be paid as follows, to wit: Fifteen per cent. of the whole amount to be paid to the party of the first part on demand, and fifty per cent. of the whole amount shall be paid as soon as all the machinery arrives at Kansas City, Mo. But should a part of said machinery arrive at Kansas City, Mo., in advance of other parts, a like per cent. shall be paid upon said machinery in accordance with a schedule price hereto attached.

The party of the second part shall furnish all materials and labor required by the party of the first part to start said works, such as

corn, coal, boneblack, filter cloths, oils, chemicals, labor, &c., and the manufacturing superintendent shall at all times have exclusive control of said works.

The party of the first part shall not receive any further pay than is above stated, and a failure to produce a yield as above specified shall forfeit the balance due the party of the first part; but when the guarantee shall be fulfilled, then the party of the second part shall pay to the party of the first part the remaining thirty-five per cent., as follows: A twenty per cent. interest in the said works, and the balance in cash.

The syrup made shall be of a density of 40 degrees by a Baume saccharometer scale.

J. MICHELS.
GEO. P. OLMSTEAD.

35 Plaintiff states that by said contract he agreed and undertook, upon the conditions above mentioned, to furnish defendant at Kansas City, Missouri, with all necessary machinery for manufacturing corn into syrup, commonly called glucose, by a dry process, said machinery to be of sufficient capacity to manufacture two thousand bushels of corn into said syrup per day of twenty-four hours, and by said contract plaintiff was to set said machinery in proper manner, and was also to furnish party of second part, this defendant, an expert or manufacturing superintendent for at least five years.

Plaintiff says that by said contract, as above set forth, defendant undertook and promised to furnish plaintiff with suitable buildings in which he could place said machinery, and to furnish all brick and stone work and foundation supports, all to be located in the city of Kansas; and further, defendant, by said contract, agreed to pay plaintiff for such machinery the sum of eighty-one thousand one hundred and sixty dollars, fifteen per cent. of which was to be paid plaintiff on demand; plaintiff further states that he has been since the date of said contract ready and willing to comply with the same, and to furnish said machinery, and has demanded of defendant the said fifteen per cent. of said contract price, and has demanded of defendant that he furnish for him buildings in which to erect said machinery, so agreed to be furnished, but plaintiff says defendant has from time to time, and at all times not only neglected, but refused to perform the terms of said contract so to be performed by defendant, has refused to pay plaintiff said fifteen per cent., and has refused to furnish said buildings, and has re-
36 fused in every way to perform his part of said contract, and has notified plaintiff that he will not carry out the terms of said contract, and that he will not receive said machinery; plaintiff says that by the completion of said contract according to its terms, he would have made large profits, to wit: the sum of thirty thousand dollars, and plaintiff says that by reason of said neglect, failure and refusal of defendant to comply with the terms of the aforesaid contract, he has been damaged in the sum of thirty thousand dol-

lars, for which and interest thereon, as well as costs, he demands judgment.

TICHENOR & WARNER,
Attorneys for Plaintiff.

Said petition is endorsed on the back thereof as follows: 393. Jacob Michels, *vs.* George P. Olmstead. Petition filed September 29th, 1881. H. C. Geisberg, clerk. Tichenor & Warner, for plaintiff.

37 *Answer.*

Answer of defendant George P. Olmstead to foregoing petition.

In the United States Circuit Court, Western Division of the Western District of Missouri, May Term, A. D. 1882.

JACOB MICHELS, Plaintiff,
vs.
GEORGE P. OLMSTEAD, Defendant.

1. Defendant, by leave of the court thereto first duly had and obtained, for amended answer to plaintiff's petition, admits that on said fifth day of March, 1881, plaintiff and defendant did sign the instrument in writing hereto annexed and made a part hereof, marked Exhibit "A," and that said instrument so signed is the same instrument mentioned in the petition, but defendant alleges that said instrument is not truly copied in the petition. Defendant states that said instrument when so signed had annexed to it, and referred to therein as a part thereof, a certain schedule in writing which was and is a part thereof in fact, which said schedule is hereto annexed, and marked Exhibit "B," and is made a part hereof. And defendant denies each and every allegation in said petition contained not hereinbefore specifically admitted.

Wherefore defendant prays judgment.

2. For a further and second defense to plaintiff's action, defendant states that plaintiff and defendant did on the fifth day of
38 March, 1881, sign the written paper hereto annexed, marked Exhibit "A," with the schedule in writing thereto attached as a part thereof, hereto annexed and marked Exhibit "B," which said written paper and schedule are the same instrument in writing mentioned in the petition, although the same are not truly copied or set forth in the petition. And the defendant states that said instrument was not so made or signed by plaintiff and defendant as or for a contract between themselves, but was so made and signed for the following purpose, and no other, and as a part of the following transaction: Before said fifth day of March, the plaintiff and —— Rogers and —— Stebbins pretended and gave it to be understood to defendants and certain associates of his, hereinafter named, who were residents of Kansas City, in the State of Missouri, the plaintiff and his said associate, Rogers and Stebbins, being residents of Detroit, in the State of Michigan, that they, plaintiff and his said

associates, were the owners and possessors of a certain secret process of manufacturing syrup and sugar from corn, which they called "the dry process," which they were willing to impart to and permit to be used by others upon certain terms which were not fully understood by defendant and his said associates and the defendant and his said associates, among whom were Louis Deardorff, Charles B. Leach, John F. Hall, and others, had it in contemplation to form a corporation for the purpose of manufacturing such sugar and syrup from corn by some process, and that they might be more fully informed as to the merits of said "dry process" and the terms upon which the use of said process could be obtained from plaintiff and his said associates, had appointed this defendant and one
39 Harris and one Dravers a committee to visit plaintiff and his associates, and inspect the operation of making sugar and syrup by plaintiff and his associates by said "dry process," and to obtain from plaintiff and his associates the terms upon which they would permit the use by said proposed corporation of said "dry process" in a manufactory of sufficient capacity to consume one thousand bushels of corn a day, to be erected and operated by said proposed corporation at or near Kansas City, Missouri, and on said fifth day of March, the defendant and said Harris, Dravers, as such committee were in consultation and treaty with plaintiff and his said associates regarding said matters. In said negotiation plaintiff and his associates informed said committee that the only terms upon which they would permit said proposed corporation to have the use of said process were that they should have the superintendence of the procuring and erecting of the machinery to be used in said manufactory on terms to be agreed upon between plaintiff and his associates and said proposed corporation; that they should have an interest in said proposed corporation as stockholders therein of at least ten thousand dollars, and that they should for one of their number have the superintendence of the construction of said works and of the operation of the same at salaries to be agreed upon between themselves and said proposed corporation. It was further understood between said parties that in order to induce defendant and his associates to form said corporation it was necessary that said committee should witness the operation of making syrup and sugar by plaintiff and his associates by said process, and thus be enabled to report to their associates at Kansas City the results of such inspection, whereupon plaintiff and his associates informed said com-
40 mittee that they had established a rule or regulation in their business as owners and possessors of said secret process that no person should be allowed to witness said operation of making sugar and syrup unless such person were bound to them in a contract to erect works for the manufacture of sugar or syrup by said process, but that as said corporation was not yet organized, and such contract could not be made, they would waive everything except a formal compliance with said rule, and proposed that defendant should sign a contract with plaintiff as one of the possessors of said process for the erection of such works, and that the making of

such contract might and should be considered as a mere formal compliance with said rule, thereby entitling defendant as one of said committee to witness said operation, and that said contract when made should have no force or effect to bind defendant by any of the terms therein contained, but that said contract might be considered and held as the basis of a contract to be thereafter made between plaintiff and his associates and said proposed corporation, and that defendant upon said understanding and agreement that said contract should have only the force and effect aforesaid, did sign said contract, and in pursuance of said understanding and agreement was thereupon admitted by plaintiff and his said associates as such committee, and on behalf of his, defendant's said associates, to witness and inspect said operation. And defendant says that by reason of the premises he is not bound by any of the terms and provisions in said contract contained.

Wherefore defendant prays judgment.

41 3. For a further and third defence to plaintiff's said action, defendant states that on said 5th day of March, 1881, plaintiff and defendant did sign and execute the contract contained in exhibits marked "A" and "B," said Exhibit "B" being a part of the contract contained in said Exhibit "A," which said contract being the same mentioned in plaintiff's petition, but not therein truly copied or set forth. And defendant says that at and before the signing of said contract by defendant, the plaintiff intending to cheat and defraud defendant and to induce him to sign said agreement, falsely and fraudulently represented to plaintiff that the prices of said machinery mentioned in said contract schedule were the lowest actual cost prices of said machinery, and that there could not by any possibility any profit or advantage arise to plaintiff from the furnishing of such machinery at said prices, and that the defendant was at the time as plaintiff well knew entirely ignorant of the nature and cost of said machinery, and was compelled to rely entirely upon plaintiff's said representation thereof; and that as plaintiff then well knew said prices were not the lowest cost prices of said machinery, but were grossly in excess of such cost prices, and that said representations and all of them were as plaintiff well knew, false. And defendant says that he did rely upon and believe plaintiff's said representations, and was induced thereby to so sign said contract by reason whereof said contract is null and void.

Wherefore defendant prays judgment.

4. For a further and fourth defence to plaintiff's action defendant states that plaintiff and defendant did on said 5th day of

42 March, execute a contract in writing, which is contained in Exhibits "A" and "B" herewith filed, and made part hereof, and which is the same contract mentioned in the petition, but which is not in said petition truly copied or set forth.

And defendant says that he was induced to execute said contract by the false and fraudulent representations and practices of plaintiff, and one Harris, one Rogers, and one Stebbins, who were jointly interested with plaintiff in the procuring of said contract, in the manner following, to wit:

Before and during the months of February, 1881, and at all times thereafter, said plaintiff, Rogers and Stebbins claimed and pretended to be the owners and possessors of a certain secret process of making syrup and sugar from corn, which they called the "dry process," and which process they claimed to be of great value, for the reason that by said process sugar and syrup of good and merchantable quality could be manufactured from corn at much greater profit, in shorter time, at less expense, in greater quantities in proportion to the amount of corn used than from any other known process or method of making sugar or syrup from corn, and that said process and the use of the same was of great and almost incalculable value. Before said month of February, plaintiff and said Rogers and Stebbins had agreed with said Harris that if he would induce any person to engage in the manufacture of syrup or sugar from corn by the said "dry process" under a contract with them said plaintiff, Rogers and Stebbins, for the erection of the machinery necessary to be used in such manufacture that he, the said Harris, should be entitled to and receive from them fifteen per cent. of all the profit that might accrue to them under such contract. That after-
43 wards, in the month of February, 1881, said Harris represented to defendant and certain associates of defendant who were residents of Kansas City, Missouri, that he was desirous of engaging in the manufacture of glucose or syrup from corn at Kansas City, Missouri, and solicited defendant and his associates to join him in forming and organizing a corporation under the laws of Missouri, for that purpose, in which the said Harris and defendant and his associates should become stockholders, and fraudulently concealing from defendant and his associates his aforesaid agreement with plaintiff, and said Rogers and Stebbins represented to defendant and his associates that said "dry process" was superior to all other processes or methods of making sugar or syrup from corn, and that it would be greatly to the advantage of said proposed corporation and themselves as stockholders therein to procure the use of said "dry process." That thereupon, defendant and his associates agreed with said Harris that if it could be made to appear to their satisfaction that said "dry process" was so superior to other processes, and the use of the same could be obtained by said corporation on reasonable and satisfactory terms, they would subscribe the amount of stock necessary, and form a corporation for the purpose of manufacturing sugar and syrup by said process, and for the purpose of satisfying defendant and his associates in the matters aforesaid, defendant and said Harris and one Dravers were appointed a committee by all said parties to go from Kansas City to Detroit, in the State of Michigan, and there witness the operation of making sugar and syrup from corn by plaintiff and said Rogers and Stebbins, and investigate the merits and advantages of said process, and the terms upon which
44 the use of the same could be obtained from plaintiff and said Rogers and Stebbins for a manufactory of sufficient capacity to use one thousand bushels of corn a day. That thereupon, defendant and said Harris and Dravers did proceed to Detroit, and as

such committee on behalf of themselves and their associates entered into a negotiation with plaintiff and said Rogers and Stebbins for the purpose aforesaid. The plaintiff and said Rogers and Stebbins thereupon informed said committee that they would not permit their said process to be used by said proposed corporation unless they themselves should be permitted to be interested therein as stockholders to the extent of $20,000 of the stock thereof, and proposed that said corporation should be formed with larger capital for the erection of a manufactory of a capacity of 2,000 bushels a day. Plaintiff and said Rogers further stated and represented to said committee that said process was superior to all other processes in the same particulars heretofore stated to defendant and his associates by said Harris, and that the value thereof lay in the fact that it was a secret known only to themselves, and which they would never communicate to any person, and that only three manufactories would be established in which it could be used, one only of which should be at or near Kansas City, each one of which would be superintended by one of themselves, and that the capacity of all such manufactories would not be over 18,000 bushels of corn a day, and that in case they should permit said proposed corporation to have the use of said process, said Rogers would superintend the erection of the machinery thereof and said Stebbins its operation.

45 Plaintiff and Rogers and Stebbins further stated the terms upon which said proposed corporation could have the use of said process were: First, that they should be interested as stockholders in such corporation as aforesaid; second, that one of their number, said Rogers, should superintend the purchase and erection of the machinery necessary for such manufactory, at a salary to be agreed upon to be paid to them; third, that one of their number should have the superintendence of the operation of said manufactory, at a salary to be agreed upon to be paid to them.

Plaintiff and said Rogers and Stebbins then presented to said committee a schedule of the cost of machinery for a manufactory of a capacity of 2,000 bushels of corn a day, which is the paper hereto annexed, marked Exhibit "B," and stated that the prices of machinery therein set down were the lowest actual cost prices at which such machinery could be obtained; that they would themselves furnish it at those prices, but that they could not possibly make any profit by so furnishing it, and that the corporation, if formed, could buy it whenever it might see fit, and that their proposed terms to such corporation would include no profit whatever on the machinery. Said committee then desired to inspect the operation of making sugar and syrup by said process, whereupon plaintiff and said Rogers stated that they had established a rule or regulation as owners and possessors of said process that no person could be permitted to see said operation unless such person was already bound by contract with them to erect a manufactory for making syrup by said process, but that as they greatly desired the organization of said proposed corporation they would only insist upon a mere formal compliance with

said rule, and that the plaintiff and defendant should sign
46 the contract hereto annexed, marked Exhibits "A" and "B" as such matter of formal compliance with said rule, and that the contract so signed might be taken as a basis or proposal on their part for the furnishing of said machinery by them to said corporation with certain changes and amendments they desired to make before sending it as such proposal to said corporation, and that said contract when signed should not be considered as a contract binding on any party but only as a formal preliminary to the completion of his business as such committee in the matter of seeing said operation by defendant. Upon the understanding aforesaid defendant signed said contract, and on the succeeding day was permitted by plaintiff as a member of said committee and in behalf of his said associates to see and inspect said operation. And defendant says that said Harris was present and acting with defendant as such committee during said entire negotiation, and that defendant and his associates were entirely ignorant of his interest in the profits to plaintiff under said contract until after the same was executed, and plaintiff and said Rogers and Stebbins knew that defendant and his associates were ignorant thereof, and with said Harris fraudulently concealed the fact of said Harris' interest in the procuring and making of such contract from defendant and his associates.

And defendant says that at the time of the making of said representations it was not true, and plaintiff and said Rogers and Stebbins well knew it was not true, that plaintiff and said Rogers and Stebbins had any secret process called the "dry process" known only to themselves, or that said "dry process" was superior to or
47 had any advantage over other processes in any of the particulars stated aforesaid, or that by said "dry process" sugar or syrup of a good and merchantable quality could be made from corn; or that said "dry process" or the use thereof was of any value to any person or that plaintiff and said Rogers and Stebbins had determined to limit the use of said "dry process" to three manufactories only, one of which was to be at or near Kansas City or all of which were to have capacity of not more than 18,000 bushels of corn a day, or that plaintiff and said Rogers and Stebbins had the rule or regulation in that respect; or that the prices of machinery were the lowest actual cost prices of such machinery, and defendant says that at the time of the making of said representations it was true and plaintiff and said Rogers and Stebbins well knew it to be true that said "dry process" was known to and understood by many persons besides themselves, and that the only syrup or sugar that could be produced by said process was entirely worthless and unmerchantable, and that said process could not be used to any profit or advantage, and that said "dry process" was a humbug and a fraud in itself in every respect, and that said prices of machinery contained in said contract were in fact three or four times greater than the actual cost prices of such machinery.

And defendant says that plaintiff and said Rogers and Stebbins well knew that defendant had no knowledge of the nature or cost of the machinery mentioned and was compelled to place entire

reliance upon the representations of themselves in that respect, and defendant says that each and all said representations were false and fraudulent, and that plaintiff and said Rogers and Stebbins made the same to defendant with the fraudulent purpose of cheating and defrauding him and of entrapping him into signing a most
48 unjust and unreasonable contract, and holding him bound thereby, and that defendant was thereby deceived, deluded, cheated and entrapped into signing said contract. And defendant says that in the procuring and making of said contract, and in the profits that might arise therefrom, the plaintiff and said Harris, Rogers and Stebbins were all interested in common, and that the said contract was so executed by plaintiff for the benefit of himself and them in common, and that said plaintiff, Rogers, Stebbins and Harris have been at all times since the making thereof the real holders and owners thereof, and that plaintiff has brought and is prosecuting this action for the benefit of all said parties. And defendant says that in the manner aforesaid his execution of said contract was procured by gross fraud, imposition and misrepresentation, and that the plaintiff ought not to recover by reason thereof.

Wherefore defendant prays judgment.

PEAK & YEAGER AND
GAGE & LADD,
Attorneys for Defendant.

EXHIBIT "A."

Memoranda of agreement made and entered into this fifth day of March, A. D., one thousand eight hundred and eighty-one, by and between Jacob Michels, of the city of Detroit, county of Wayne and State of Michigan, party of the first part, and George P. Olmstead, of the city of Kansas, county of Jackson and State of Missouri, party of the second part, whereby it is mutually agreed as follows, to wit: That the party of the first part will furnish
49 to the party of the second part all necessary machinery for manufacturing corn into syrup (commonly called glucose) by a "dry process," so termed. Said machinery shall be of a sufficient capacity to manufacture two thousand bushels of Indian corn into the above-mentioned syrups per day (of 24 hours); the said party shall set said machinery in a proper manner and ready for operation in a building to be furnished by the party of the second part, as hereafter provided. The party of the first part shall furnish a manufacturing expert to start said works, and hereby guarantees that the said machinery shall have a capacity as above stated, and shall produce a yield of 32 pounds of syrup per bushel of corn. After said works have been put in operation the party of the first part shall furnish the party of the second part an expert, or manufacturing superintendent, for as — a time as the company want the services of said expert, and a failure forfeits the interests of the first part from the time the said works are in successful operation and goods produced as guaranteed, and the party of the second part shall

pay to the party first part a salery at the rate of seven thousand dollars per year. Said salery to be paid monthly to the party of the first part, or to his order.

The party of the second part will furnish to the party of the first part suitable buildings to place said machinery in, and shall also furnish all brick and stone work, foundation supports, etc., also a suitable chimney, also a suitable water supply, all of which shall be located at Kansas City, Missouri.

For the said machinery and setting up of the same g-areenteeing yields as before specified the party — second part shall pay to the party of the first part the sum of eighty-one thousand one
50 hundred and sixty dollars ($81,160.00) to be paid as follows, to wit: Fifteen per cent. of the whole amount to be paid to the party of the first part on demand, and fifty per cent. of the whole amount shall be paid as soon as all the machinery arrives at Kansas City, Missouri. But should a part of said machinery arrive at Kansas City, Missouri, in advance of other parts a like per cent. shall be paid upon said machinery in accordance with a skedule price hereonto attached.

The party of the second part shall furnish all materials and labor required by the party of the first part to start said works, such as corn, coal, bone black, filter cloths, oils, chemicals, labor, etc., and the manufacturing superintendent (or expert) shall at all times have exclusive controll of said works.

The party of the first part shall not receive any further pay than is above stated, and a failure to produce a yield as above specified shall forfeit the ballence due the party of the first part.

But when the said g-arentee shall be fullfilled then the party of the second part shall pay to the party of the first part the remaining thirty-five per cent. as follows, to wit: a twenty per cent interest in said works and ballence in cash.

The syrup made shall be of a density of 40° by a Beumé Saccarometer scale.

J. MICHELS.
GEO. P. OLMSTEAD.

51 EXHIBIT "B."

5 boilers, 60 x 16 53 4-tubes each, with all appendages, complete and set up	$7,537 50
3 engines, complete and set up $\frac{2}{16 \times 24}$ $\frac{1}{12 \times 18}$	3,550 00
12 run of stone with fixtures, complete	5,500 00
8 bolting chests, cloth, complete	4,370 00
Main line shafting	320 00
Flange couplings for same	256 00
Pillow-block journal, bearings for same	400 00
Line shafting	328 50
Hangers, pedestals and journal bearings	359 59
Compression couplings	160 00
4 pulleys 84 x 10	313 91
4 " 30 x 10	60 00
12 " 24 x 10	131 58

8 pulleys	72 x 10	$559 62
4 "	36 x 10	148 40
32 "	24 x 5½	239 68
8 "	30 x 7	80 16
1 "	48 x 8	34 00
1 "	20 x 8	8 50
1 "	12 x 8	4 84
1 "	30 x 8	14 06
1 "	24 x 8	10 09
20 "	24 x 5½	167 73
10 "	20 x 10	102 60
24 pairs miter gears		163 42
10 counter shafts		70 00
20 pedestals		90 00
20 slip collars		20 00
10 pair bevel gears		150 00
Elevator buckets		86 00
All belting		858 00
52 Platform elevator		$985 00
All conveyors		96 00
4 first convertors, complete		2,300 00
1 open evaporator		975 00
4 high-pressure convertors		4,680 00
4 neutralizers		1,520 00
40 first filters		3,400 00
2 sweet-water clarifyers		625 00
2 vacuum pans		9,300 00
2 filter presses		1,760 00
2 coolers or mixers		1,196 00
3 cold-water pumps		1,550 00
1 sweet " "		255 00
1 boiler feed "		310 00
1 syrup "		215 00
8 bone-black filters		3,450 00
2 " "	receivers	820 00
1 " "	truck	285 00
1 " "	elevator (all iron)	1,750 00
2 meal trucks		258 00
1 platform scale		94 00
1 scale for chemical		62 00
Copper and lead pipe		855 00
Cast-iron pipe		263 00
Wrought-iron pipe		2,527 00
Globe valves		1,685 00
1 bone-coal retort		3,300 00
1 Potter press		1,700 00
5 water-tanks		750 00
Bolts, nails, lumber, screws, &c., &c		300 00
Freights, &c		1,800 00
Setting machinery, insurance, &c		6,000 00
		$81,160 18

53 Said answer is endorsed on the back thereof as follows:
393. Jacob Michels *vs.* George P. Olmstead. Amended answer, filed May 16, 1882. H. C. Geisberg, clerk.

Reply.

Reply of plaintiff to defendant's answer.

In the Circuit Court of the United States in and for the Western Division of the Western District of Missouri.

JACOB MICHELS
against
GEORGE P. OLMSTEAD.

Plaintiff, for reply to defendant's amended answer, denies each and every allegation thereof, not expressly admitted by the petition.

Wherefore plaintiff demands judgment as set forth in the petition.

TICHENOR, WARNER & DEAN,
Attorneys of Plaintiff.

UNITED STATES OF AMERICA, *set:*

I, Warren Watson, clerk of the circuit court of the United States for the western division of the western district of Missouri, do hereby certify that the foregoing is a true copy of the petition, amended answer and reply in the cause therein named, as fully as the same appears in my office.

Witness my hand as clerk, and the seal of said court.
[SEAL.] Done at office in the city of Kansas, Missouri, this 19th day of September, A. D. 1888.

WARREN WATSON, *Clerk*,
By A. UTTER, *D. C.*

54 *Evidence.*

The evidence of George P. Olmstead, called as a witness in his own behalf, in a suit at law in this court, wherein Jacob Michels was plaintiff and George P. Olmstead was defendant, and which by stipulation of parties is to be used as evidence in this case.

GEORGE P. OLMSTEAD.

I am the defendant in this case; I live in Kansas City; I am engaged in the lumber business; I am acquainted with Jacob Michels; I first saw him at Detroit, about the time the contract sued on was signed, in March, 1881; I had never known him before that time. In the latter part of Februury, 1881, Mr. Harris, and a gentleman by the name of Deavers, came to our office in Kansas City, and inquired for Mr. Leach, my partner; he was not in. After a little while they told me their business, and it was the organiza-

tion of a company for the manufacture of glucose, and they had the company partially organized. They explained to me what they had, and showed me a sample of what they could make in the way of glucose syrup. Mr. Harris told me that there were parties in Detroit who had the secret of making this syrup. It looked very favorable, and they notified me, with others, to attend a meeting at the Lindell hotel for the purpose of discussing the question of raising a company here for the manufacture of this syrup. There were present at this meeting Mr. Harris, Mr. Deavers, Mr. Chase, Mr. Willard and Mr. Winn, and there was another present, whose name I have forgotten.

55 At this meeting the cost of erecting a house for the manufacture of these goods, and of the machinery, was discussed, and the figures were given on the different items. Mr. Harris represented the parties desiring to raise the company. It was represented that a great deal more syrup could be made from a bushel of corn by this method, known as the "dry process," than by any other method; that the manufacture of the goods was at the same time rapid and expeditious, requiring much less time to manufacture; that the cost of the manufacture was much less, and the goods were represented to be about as good as those manufactured by the wet or starch process. The company present authorized me to go to Detroit to investigate the method of making the syrup by this process, and Mr. Harris and Mr. Deavers went also. When we reached Detroit Mr. Harris took me over to the machine shop of Mr. Michels, and introduced me to him, and to Mr. Stebbens, and Mr. Rogers. I stated to them what we had come for. The first thing Mr. Rogers asked, was: "What stock are we going to have in this thing?" and said, "There are three of us, Mr. Michels, Mr. Stebbins and myself," and said they wanted an interest in the factory. I told him that no provision had been made for them; that the stock had all been raised; that is, that the stock had all been agreed upon. Then he said, "You need not go any further—we will not go any further—we will stop right here." And as I had gone so far, I told them that perhaps I could arrange it, so that they could have some of the stock; that possibly some of the members did not care much about it, and I asked him how much they wanted. He said ten thousaid dollars interest in a one-thousand-bushel house. He then asked, "Why do you not build a two-thousand-bushel house;"

56 and he said it would cost proportionately a great deal less to build a two-thousand-bushel house than it would a one-thousand-bushel house. I represented to him that we had not talked anything other than a one-thousand-bushel house. I had been there about two days, and I thought it was about time to go home. I told them I would like to see some of the goods made. They had showed us a lot of samples that looked very fine. I made a good many inquiries with reference to it, and among the number how long they had been manufacturing it. Rogers said from six to nine months, and stated that it did not change color, and it seemed to me it looked very nice.

When I asked to see the goods made—as I had come up there for that purpose—Mr. Rogers, whom Harris had told me was the expert,

said: "We cannot allow you to go into this room, as we have a contract with each other, and have agreed with each other, that no man shall go into that room, outside of our members, unless a contract is signed;" and then he pulled out this paper from his pocket—I mean the paper in suit. I think he took it out of his pocket; at any rate, he presented it at once; he presented it to me, and I commenced to read it, and said to him: "This is a contract between Mr. Michels and myself only; how is this? There are three of you, and I represent the people in Kansas City." Rogers said, "Inasmuch as you are alone here, we thought it best to let Michels represent us three, and you to represent the Kansas City people;" I then read on, and found it was for a two-thousand-bushel house, and I said, "This is farther than I can go—I cannot sign for any such money as that; it is beyond my reach entirely—
I cannot sign it." Rogers then said: "Sign this, and if
57 the company is not raised we will not hold you responsible—
if the company is not raised or formed, we will not hold you responsible." I then signed it. The signing of this contract was simply to let me into their rooms, as I understood it. I had gone to Detroit with the assurance that I should see this stuff made; when I got there, they met me with these conditions: That I could not see it until some kind of a contract was signed; and to keep that agreement with themselves, they asked me to sign that; as I told you, I refused to sign it until they positively assured me I should not be held responsible. After it was signed, I remarked to Mr. Michels, "that there is a great deal to be added to this before it can be a contract." "Well," he said, "you and Harris go by yourselves and write up what you want—such a contract as you want—and Rogers and I will go by ourselves and write up such a contract as we think we ought to have." This contract was to be between them, and the company when formed, as I understood it—a company to be formed here for the manufacture of glucose. I think this was Saturday night. Monday morning came, and Mr. Stebbins and Mr. Rogers, Mr. Michels, Mr. Harris and myself went into the room to see the goods manufactured. Rogers and Michels would have nothing to do with Deavers, and would not permit him to see the goods manufactured. They had a sack of meal in the room. They said it contained 100 pounds—two bushels of sifted meal. They took half of it and put it in a tub, and put some water with it, and something else, I don't know what it was. Mr. Rogers mixed up a portion of it, and put it into a vessel called the convertor. This
meal was mixed up with water, and the other ingredients,
58 and this was poured into it; and after a little while—Mr. Stebbins kept watching it—and it was taken out, and let down into a tub, and then it was taken from there and put into another tub over a cloth. It was sifted or strained through a cloth; and after it was strained the liquor was what they called "sweet water." Before they took it out from the convertor, they put in some other stuff. I suppose this was the neutralizer. They had to have something to kill the effect of the first ingredient they had put in. This sweet water was then run through bone black, and then

it was put into a vacuum pan. After they had finished the process I filled four bottles with the syrup, and brought them home with me. I gave one of the bottles to the teacher of chemistry at the high school, and I gave one to Dr. Eaton to have it analyzed, and one of the bottles I still have. I have kept it at my house. The bottle I gave to Dr. Eaton was in my possession from the time I got it in Detroit until I delivered it to him. When the syrup was first manufactured, it was very clear and very handsome for syrup. There is the condition it is in now (exhibiting the bottle of syrup). My wife first called my attention to it, and said: "That stuff you brought from Detroit is turning back into corn meal." This stuff was made on Monday evening, March 10th, 1881, and I have had it in my possession ever since.

When I got back from Detroit, I had a conversation with the gentlemen who were to form the company, and I showed this syrup to them; when I got back from Detroit, I found that one of the gentlemen who expected to take stock in the company to be formed, was dead; I mean Mr. Deardoff.

59 Before I signed the contract, Mr. Michels informed me that he and Mr. Stebbins were partners in this business, and those three were the sole owners of this secret, and that nobody else in the world knew anything about it, except one man in Windsor, Canada, who knew a little about it.

It was understood that Mr. Rodgers was to be the expert for erecting any building that should be built here, and was to put up the machinery. Michels said that Rodgers knew all about it, and had been in every sugar-house in the United States, and thoroughly understood his business.

While I was in Detroit, Michels and Rodgers agreed to come to Kansas City immediately after my return, and assist in raising a new company. Rodgers, however, left Detroit on Monday before I left, and did not put in an appearance again in any of the subsequent interviews. I left Detroit on Monday evening, and reached home on Wednesday. And Mr. Michels came on the following Sunday, but Rodgers did not come with him. Mr. Michels seemed very much concerned on account of his absence, and telegraphed for him a number of times, and found he was in Rochester, New York. I asked Mr. Michels how he could arrange to go on without Rodgers, who was to be the expert. He seemed to be very much concerned, but did not answer me.

After Michels came we looked around the city for a suitable place in which to erect a building for the company for the manufacture of glucose. On Monday afternoon Mr. Hall, Mr. Leach, Mr. Willard, Mr. Harris, Mr. Michels and myself met at the Lindell hotel to discuss the project of raising a company. After the subject was

60 brought up, I pulled out and showed to them the schedule of the machinery, and that contract or memorandum. I think it was right after that that Mr. Leach began to get angry; he did not like it; he did not like the price on the machinery. He said the contract was uncertain, and explained nothing; and gave no description of the quality or the kind of machinery to be used. He

inquired particularly about the engines, and wanted to know what kind of engines we proposed to put in. Mr. Michels told him a slide valve. And Leach said that that was not a good engine—that that was not the best. And Michels said he always did his work better than he agreed to. After discussing the question awhile, I got up and said, "Why, Mr. Leach, the prices there have nothing to do with this thing whatever; we are to buy the machinery ourselves, as low as we can buy it. We have the privilege of buying it, and this whole contract amounts to nothing." Mr. Michels and Mr. Harris were both present. I asked Mr. Harris, "is not this so, Mr. Harris?" and he said, "Yes." Mr. Michels said nothing; I appealed to Mr. Michels if that was not true, and he did not say anything in reply. The objection raised by Mr. Leach was that the prices of all the machinery was entirely too high, and that the machinery was not sufficiently described in the contract. We separated without accomplishing anything.

Mr. Michels was at my office again on Tuesday, and Mr. Hall, Mr. Leach, Mr. Harris and myself were present. We had considerable talk as to the prices mentioned in the schedule, but reached no conclusion; at the end of the interview, Mr. Michels said, "Well, who is going to pay my expenses down here?" The objections raised to the contract and schedule were first, that the prices
61 were too high; secondly, that they were not sufficiently described; and there was a further objection, that the goods which I brought home with me from Detroit had turned bitter, and were not fit for use. It was not at all like the samples Mr. Harris had brought down here and shown to us before my coming to Detroit. His samples were very clear and nice, and of a reddish color. Mr. Harris had proposed to take five thousand dollars of the stock in the company, but I had no knowledge of his having any interest whatever with Mr. Michels, Mr. Rodgers and Mr. Stebbins in the contract. Just before I left Detroit I asked him about this matter, and what interest he had in the thing, and he did not reply. I then asked Mr. Rodgers what interest Harris had in the construction of the building, and he said: "We are to pay his expenses, and if we make anything we may give him a little something." He said further on, nothing can be made out of this contract, for these goods are listed at cost, and that we cannot positively make over two thousand or twenty-five hundred dollars. At the time I signed the contract, Rodgers and Michels had told me that the machinery was put in at absolute cost, as low as could be bought. Before the contract was signed in Detroit, Rodgers had told me that they had put in the machinery at cost price, and if Michels manufactured any part of it we could allow him fifteen per cent. manufacturer's profit on that portion manufactured by him. They were to take stock in the enterprise, and their profits were to be derived on the amount made by their stock and in the expert's salary, which they were to divide. It was distinctly understood at the time I signed the contract I was not to be personally bound.

Mr. Rodgers told me in the presence of Mr. Michels
62 and Mr. Harris, when I refused to sign the contract—I says:

"No, I will not sign this—this is too much for me—I won't sign this." Mr. Rodgers then says: "Sign this, and if the company is not formed, we will not hold you responsible." I refused to sign it, and told him I would not sign such a paper as that. In fact I did not go to Detroit to sign anything. I went merely to investigate. After his assurance that I should not be personally bound, I signed it. When I went to Detroit I explained to Mr. Rodgers and Mr. Michels and Mr. Stebbins that I had come at the request of certain gentlemen in Kansas City, who were contemplating the formation of a company for the manufacture of glucose, and that I had come there to investigate the process, and report to them at Kansas City. They understood all along that I did not personally propose to build any works, but was simply there in the interest of an unformed company. I went there for the purpose of witnessing the process, and investigating the probable cost of the building for the manufacture of a one-thousand-bushel house per day. About forty thousand dollars had been pledged by parties here in Kansas City for the erection of a building for the manufacture of this syrup, provided they were pleased with the process and with the cost of the building and machinery. Mr. Harris had been engaged in raising a company, and had the names of gentlemen who were willing to go in on the terms specified. At the meeting at the Lindell hotel, at which Mr. Michels, Mr. Leach, Mr. Hall, Mr. Willard, Mr. Winn, Mr. Harris and myself were present, after the signing of this contract, I stated repeatedly that the contract and schedule presented there was not intended as a contract, but was simply
63 a basis upon which the company, to be formed, could act in the construction of their building, and in putting in the machinery. I think it was understood that the company, if they chose, could furnish all the machinery, or any part of it, if they could get it at a less price. Mr. Michels said nothing.

We endeavored to raise the company, but failed. Mr. Deardorff, who was expected to take some of the stock, had died; and the other gentlemen not being pleased with the outlook, refused to subscribe stock, and the whole matter failed, and no company was raised.

The evidence of Bradner L. Harris, given in a suit at law in this court, wherein Jacob Michels was plaintiff, and George P. Olmstead was defendant, and which by stipulation of parties is to be used as the evidence of said Harris in this case.

BRADNER L. HARRIS.

I reside in Kansas City. I came here in December, 1880; I have been engaged in putting up glucose works; I came here first in the interest of the Rochester Company. It was not determined at that time whether they would put up works to manufacture glucose by the wet or the dry process.

I am acqu-inted with Jacob Michels and Mr. Rodgers. I had a conversation with Mr. Olmstead and Mr. Hall and others with reference to the formation of a glucose company here. This was about the first of February, 1881. I had then concluded to draw out of

the Rochester Company, and organize a new company here.
64 Prior to that time I had conferred with Mr. Michels and Mr. Rogers at Detroit in reference to the formation of this company. By agreement with them I was to have a certain percentage of the profits arising from the contract if I got this dry process adopted by the company here. When I came here the amount of this percentage was not named. When I went to Detroit with Mr. Olmstead I talked over the matter with Mr. Michels and Rodgers that we were trying to organize this company. And we first tried on the basis of a one-thousand-bushel house, and they pursuaded me to induce Mr. Olmstead and the company here, if he could raise one, to put in a two-thousand-bushel house; that it would take a proportionately less amount to build that. Then Michels and Rodgers agreed to pay me a certain percentage of the profits derived from the machinery and from the putting up of the works. Under the arrangement I had with Michels and Rodgers, I tried to raise the company here before I went to Detroit with Olmstead. And with this purpose in view I visited a number of gentlemen to induce them to go into the company, and among the number was Mr. Olmstead that I saw. I told Mr. Olmstead that it had been represented to me that the manufacture of glucose by the dry process was very profitable, and we believed we ought to have no trouble to raise a company. I told him that this dry process was far preferable to the wet process; that more goods could be produced at less expense, and the machinery would be less expensive, and it would take less working capital to run it; that is, that the grain could be converted every twenty-four hours into the product. I showed him some samples which Michels and Rodgers had given
65 me in Detroit. I had three samples of the syrup, or glucose, that I exhibited to these gentlemen to show them what could be done from this process. I exhibited them to Mr. Olmstead, Mr. Leach, Mr. Winn and Mr. Willard. These samples were represented to me by Rodgers and Michels to be products of the dry process. Mr. Olmstead told me to go over and see Mr. Deardorff, and if I could show him as I had shown them, he would probably put some money into it. I went over to Mr. Deardorff and had a long talk with him, and also met him the next day. I explained to him then the business, and showed him these samples, and he said: "I will see Mr. Olmstead, and if it is all right and satisfactory I will put some money in this." In the meantime we went down to see the Gillis-house property in this city to ascertain if it would answer the purpose of a glucose factory. I then stated to these gentlemen: "Suppose I call a meeting of the gentlemen who propose to put money into this, and let us get together and talk it over." I then notified Mr. Olmstead, Mr. Leach, Mr. Williard, Mr. Chase, Mr. Deardorff. These gentlemen then met me at the Lindell hotel. I exhibited these samples, and told them of the profits in the business, and of the necessity of works West, and of the profits that could be derived from Western works over Eastern works; they were right at the home of the products that made these goods, and I cited to them Hamlin, who got rich out of it. At the first meet-

ing, we concluded to call another meeting. At the adjourned meeting they wanted to organize a company. I was going to organize a company, and Mr. Leach and Mr. Olmstead and Mr. Willard and some others. Mr. Leach said: "We would like to know a little more about this: that Mr. Deavers had been in the
66 glucose business, and he had not made a success of it in his Leavenworth deal, and we do not know for certain whether they can make these goods or not." And these gentlemen suggested that somebody go to Detroit with me. I had told them that Mr. Michels at Detroit had the secret of the process. It had been represented to me that Michels and Rodgers had the sole manufacture of these goods; that is, that they had this dry process better than anybody else. And I said to Mr. Olmstead, or to these gentlemen: "If you will send a representative down with me, if it is not as represented I will pay the expenses." It was suggested that Mr. Olmstead should go down with me. Then these gentlemen said "We will pay Mr. Olmstead's expenses to go to Detroit with you, and see these goods made." So we started from here on Monday night, or Tuesday, and went to Detroit. After we got to Detroit, Mr. Deavers, and Mr. Olmstead and myself went over to Michels' shop, and I introduced Mr. Deavers and Mr. Olmstead, and told them what we came for. I told them I had represented to these men what they could do. "Now," says I, "if you can show them everything is satisfactory, I can raise a company and put up the works in Kansas City before the Rochester people get started." Mr. Rodgers said to me, We will not have anything to do with this man; we will not allow Mr. Deavers to have anything to do with this deal. Of course, that stopped it for a little while. I told Mr. Olmstead of it. Mr. Deavers felt hurt that he could not be connected with us. He was not admitted to take anything in the business at all. I told Mr. Michels we could organize a company for
67 a one-thousand-bushel house; that I had already pledged to me, if everything was all right, about forty thousand dollars. "Well," he says, "you had better make it a two-thousand-bushel house." I said: "Mr. Olmstead has not come here with any instructions to talk of a two-thousand-bushel house. He came here to see the goods manufactured, and if it was satisfactory, to make arrangements for the machinery for a one-thousand-bushel house, if they could raise a company." We talked three days, perhaps, before we came to any conclusion. On Saturday afternoon, just about dusk, we went down to the works again—Mr. Michels' shop—and went into the office, and Mr. Olmstead said: "Gentlemen, we have been here a good while, and I would like to see you make these goods—see whether you can make these goods." Mr. Rogers spoke up and said: "We will not allow anybody—we have made a promise among ourselves—there are so many men here to look at the glucose works, and want to see these goods made—we have made a promise among ourselves not to allow anybody in there to see the goods made unless they sign an agreement to go on and put up the works, if satisfactory;" and at that produced this writing. And Mr. Olmstead started to look it over, and

Mr. Rogers said Let me read it for you, and so he read it over. Mr. Olmstead said: "I cannot sign anything of that kind—I have got no authority to sign it." Then Mr. Rogers said: "Michels can sign it for us, and you can sign it for the Kansas City people." Mr. Olmstead said: "It is a terrible large thing, and I cannot take any responsibility of this kind." Mr. Rogers then said: "If you want to see these goods made, sign that paper, and we will show them to you." Mr. Olmstead simply said: "It is an enormous thing, and I cannot
68 sign it." Mr. Rogers then said: "You sign it, and if you cannot form the company we will not hold you personally responsible on this contract." Mr. Olmstead said: "If I am not to be held personally responsible I will sign it." The contract was then signed, and after it was signed Mr. Michels said: "You can go to your hotel and draw up a contract as you would like for a company, and Mr. Rogers and I will draw up a more elaborate one—this was a hurried affair." Mr. Olmstead and I went to the hotel; of course, we could not draw up a contract for the company because we had not talked with the company about putting up a two-thousand-bushel house. So on Monday Mr. Olmstead and I went down to the works—to Mr. Michels' experimental works—and saw them manufacture some goods by what they called the "dry process," but they did not get it finished until Tuesday evening about four o'clock. I brought home two bottles of the product, and I think Mr. Olmstead brought home three or four. Mr. Michels, Mr. Olmstead, Mr. Rogers and myself were the only ones present when the contract or memorandum was signed. Before we left Detroit it was agreed and understood that Mr. Michels and Mr. Rogers should go down to Kansas City the fore part of the next week to help to perfect arrangements for this company, and to make arrangements and to look over the buildings we had inspected, and see if they would answer, and if they would not answer to go ahead and put up new buildings, if we got started. It was understood at Detroit that Michels and Rogers were to take ten or twenty thousand dollars of the stock in the company. And that Michels and Rogers were to give me fifteen per cent. of the profits of the contract for the building
69 and machinery, if we succeeded in raising a company. I think Mr. Stebbins was to have eighteen per cent., Mr. Rogers thirty-three per cent. and Mr. Michels was to have the balance. On the following Sunday Mr. Michels came to Kansas City in accordance with our previous arrangement to help us arrange for raising the company and building the works. Mr. Rogers did not come. Mr. Rogers was the expert who was to put in the machinery, and to manipulate and make the goods at the start. Mr. Michels signed that contract on behalf of himself and Mr. Rogers and Mr. Stebbins and myself. When Mr. Michels came to Kansas City I asked Michels where Mr. Rogers was; he said: "I expected to meet him here." I said: "I think he has gone off with the Rochester people." And he said: "I think it is not so," and said: "I think he will be here at any rate." And he went off, and telegraphed to Rogers. He telegraphed several times, and received no satisfactory reply. Rogers did not come. I asked him what he should do if

Rogers did not come. He said he did not know, "I don't see how I can get along without him;" but he said: "I shall not give him up yet."

We had a meeting at the Lindell hotel Monday evening. Mr. Leach, Mr. Olmstead, Mr. Chase, Mr. Winn, Mr. Hopkins and Mr. Hall were there. Mr. Michels was there also. At this meeting Mr. Leach objected to the prices of the machinery. He had understood the machinery was to be put in to us at cost. Mr. Olmstead said that that was true, and we could buy the goods where we pleased, wherever we wanted to buy. Nothing was done at this meeting, and we concluded to wait until Rogers came. I saw Mr.
70 Michels several times afterwards, and had several conversations with him. I told him that this contract with Olmstead did not amount to anything, as he knew, and that I thought he had better try to make arrangements for forming a company before he left; that I thought if he could not do so we would have to drop the matter, and go no further. He understood at the time if we did not raise the company there was no responsibility upon anybody under that contract. We then talked about the one-thousand-bushel house, and I then told him if we could not go on with the two-thousand-bushel house we might put up a one-thousand-bushel house, the company was not formed. I figured a long while, I think four weeks or more, after Mr. Michels left here trying to perfect arrangements, but I could not succeed in doing so. The parties here objected to going into the arrangements because the machinery was too high, and because the contract was not sufficiently explicit, and because the syrup we had brought home with us was not a good or merchantable article. I had a private conversation with Mr. Michels before he left here in which I told him we cannot go on with this if we cannot raise a company. He said: "We can fall back on the one-thousand-bushel house." I said: "You cannot without Rodgers." He said: "Rodgers will be here; if he don't come, I shall go and see him."

The samples which I brought here with me, in the first instance, to exhibit to these people were furnished to me by Michels and Rodgers, and they represented to me that these samples were products of the "dry process." Mr. Rodgers has since informed me that they did not make these samples at all, but that they were made by Mr. Hamlin by his starch process or wet process. At the time
71 I brought them here I supposed that they were made by the "dry process," and Mr. Michels and Rodgers had so represented, and I represented them to these people as samples of goods made by the "dry process." These samples which Mr. Olmstead brought back with him from Detroit showed a good deal of sediment at the bottom. It is not a merchantable product, which could be sold in any market. There is an oily bitter taste to it.

I am acquainted with the handwriting of Mr. Michels. I have had correspondence with him.

Q. State whether you received this letter from him? (Here the witness is shown a letter, dated September 8th, 1882, from Michels to the witness.)

A. Yes, sir.

(Said letter was introduced in evidence by the defendant's counsel, and reads as follows:)

DETROIT, MICHIGAN, *December 8th*, 1882.

FRIEND HARRIS: As I agreed to write you on Monday regarding the Olmstead suit I could not do so, as I could not have an interview with my attorney here, so I had a talk with my attorney. He said that if Olmstead meant settlement that that was the time for me to entertain a thought of settlement, although he said that my claim looked strong enough to stand a suit on, and if it were tried in our court he would be able to say quite closely just what the result would be, as I have some new evidence as to certain matters. However, he said that if he meant settlement all right, and he might make me an offer in the matter. Now, Harris, I am willing, and have admitted it to you in letter and statement made that Olmstead was to be let off on the contract of the two-thousand-bushel house, if his party did not approve of a two-thousand-bushel house, and he was only holden to a one-thousand-bushel house at forty-one thousand and some odd hundred dollars. I cannot give just the figure, as my papers are at my lawyer's office. I am
72 perfectly willing he should have the benefit of the same; of course, he may think he is all safe in the matter, and I think I am, and the old saw is that possession is nine-tenths of the law, and I hold the possession. However, I am not disposed not to make settlement at fair basis, and I think it will be money in his pocket, and time saved by considering it so, and whatever settlement that might be made would not be generally known. Now, if *we* would talk settlement, and meet me half way, I will do the same. If not, all right, and this must go to trial.

Yours truly, J. MICHELS.

Cross-examination by Mr. TICHENOR:

It was distinctly stated at the time that Mr. Olmstead signed the contract that he would not be bound by it. I do not say that the contract amounted to nothing. We went down there to consider a one-thousand-bushel house, and Olmstead said We can put in a one-thousand-bushel house, if we cannot get these people to go on and organize a house for two thousand bushels. The contract meant this: That this company should be raised for a two-thousand-bushel house; there would be more benefits than from a one-thousand-bushel house, and in case the corporation was formed there was to be another contract made. In no event was Olmstead to be bound on this contract. If the company was raised, the company was to be bound, and a new contract was to be made; if the company was not raised, then Olmstead was not to be bound on the two-thousand-bushel contract.

The testimony of George B. Leach given on the trial of a suit at law in this court, wherein Jacob Michels was plaintiff and George P. Olmstead was defendant, and which by stipulation of parties is to be used as the evidence of said witness in this case.

73 CHARLES B. LEACH.

I am acquainted with George P. Olmstead; he is my partner in the lumber business; I know Jacob Michels slightly; I am not acquainted with Mr. Rodgers; I never saw him; I know Mr. Harris. Mr. Harris called a meeting at the Lindell hotel for the purpose of discussing the question of building glucose works in this city for the purpose of manufacturing glucose by the "dry process." Mr. Harris and Mr. Deavers, Mr. Hall, Mr. Winn, Mr. Olmstead, Mr. Chase and myself were present at this meeting. It was proposed to raise an incorporated company for the purpose of manufacturing this glucose. Mr. Harris and Mr. Deavers stated to us that the "dry process" for the manufacture of these goods was far superior to the wet process, much cheaper, and took less grain, and less time to make the product. They showed us some samples of the syrup and sugar that was made by this "dry process," as they stated. They said it would cost about thirty-five thousand dollars to start the works in the old Gillis property on the levee; that is, to start a one-thousand-bushel house. There seemed to be a willingness upon the part of those present to engage in the business, and to form a company if the things should prove satisfactory; we, who were at the meeting, were not willing to go ahead and subscribe stock on their representation without seeing the process investigated. We were then to issue stock on the condition that everything was satisfactory, and as represented by Mr. Harris. Something was said about Mr. Olmstead going to Detroit to see the process, but Harris said it would be of no use for him to go there alone; that he
74 could not get the secret without his being there; consequently, he volunteered to go himself, and the balance of us agreed to pay Mr. Olmstead's expenses; that was the reason that Mr. Olmstead went to Detroit.

I first saw Michels shortly after Olmstead returned from Detroit; I was introduced to him at Mr. Olmstead's house. That was on Sunday morning. I was introduced to Mr. Michels as the man who came here to incorporate this company, and to start the works. It was understood at the time that I was to take about five thousand dollars of the stock if the thing proved satisfactory. I went with Mr. Olmstead and Michels and Harris to look at the Gillis-house and other property for the purpose of selecting a locality for the erection of the works, provided we formed the company and built them. After we had looked around through the city for this purpose a meeting was called at the Lindell hotel, at which Mr. Hall, Mr. Olmstead, Mr. Harris, Mr. Michels and myself were present. I think the schedule of prices was read over at this meeting. I made some objection to it as being too high, and then the contract was finally produced; that is, the contract which is in suit. I had not

heard of any contract before this. I raised objections to the price of the machinery, and said it was double what it should be, as far as I knew, on some things. I told them I was not willing to go ahead under this arrangement, when Mr. Olmstead jumps up and said: "O, this has nothing to do with this matter, Mr. Leach; we have the right to buy this machinery wherever we are a mind to," and turned to Mr. Harris and said: "Is not this so, Mr. Harris?" Harris said: "Yes, sir;" Michels sat right in front of him, and he declined to make any reply whatever. Mr. Olmstead
75 said that the contract did not cut any figure; that he was not bound by it, and Michels did not deny it. I thought there was too much latitude also in the specifications. For instance, it did not specify the thickness or the quality of the iron; the quality of material of any kind whatever; and I wanted to know, and understand, if I was going into this sort of a thing what we were going to have. I did not do things in that sort of a way. I called it a very loose contract; I asked Michels what kind of an engine he expected to put in, and he said a slide-valve engine. That is not a first-class engine, and nothing else than a compound engine would answer our purposes. After that Mr. Hall withdrew, and the meeting adjouned until morning. I declined to have anything to do with it on that basis. I saw Michels the next morning, and I showed him that they had misrepresented the price of their machinery; that I was not willing to go into into it. He left the office.

I saw the samples of glucose that Mr. Harris brought back with him from Detroit. It was a villainous compound, and it was not fit for niggers to eat. It was very bitter; I told them if they expected to sell such stuff as that they would have to find a different community from this. I have not seen the samples since until now. This stuff here, before the jury, I think is the stuff. When I told Michels that the machinery was charged above actual prices, he did not deny it. He said he was not expecting to come up here, and put up the house for nothing. I told him of course not, but that I did not want him to have over fifty per cent. on that arrangement.

The syrup that Olmstead brought back with him from
76 Detroit did not compare at all with the samples that Mr. Harris had exhibited to us at the meeting before Olmstead left for Detroit. The first samples were very fair syrup, and the sugar was nice, too.

I concluded I would have nothing to do with raising the company, and took no stock in it immediately after the Lindell hotel meeting at which Mr. Michels was present. The other parties also refused to have anything to do with it, and no company was raised.

Deposition of Harry Hamlin, given on behalf of the defendant in a suit at law in this court, wherein Jacob Michels was plaintiff and George P. Olmstead was defendant, and which by stipulation of parties is to be used as evidence in this case.

HARRY HAMLIN.

I am twenty-seven years of age; I reside in Buffalo, New York. I am vice-president of the Buffalo and American sugar works, manufacturing grape sugar, sugar and glucose syrup. I have been engaged in this business since 1874. I am practically familiar with the mode of manufacturing. It has been a part of my business superintending the manufacture of the product. We have two factories in the city of Buffalo, one in Peoria, Illinois, and another in Leavenworth, Kansas. I have the supervision of all four of them. In these factories we manufacture syrups, table syrups, glucose, grape sugar in its different forms for commercial purposes. I am familiar more or less with the different processes of manufacture. There is a process commonly called the dry process, in contradistinction from what is commonly called the wet process. What is commonly termed or understood in our business as the dry process is the manu-
77 facture of glucose by such a process of manufacture as treats the corn usually as a whole state, and without subjecting it to any steeping process, and the conversion is made of the grain in that condition. Sometimes it is cracked up, and sometimes it is prepared as corn meal, ground as ordinary corn meal. In this state it is converted dry; that is, the application of the steam and acids is done without manufacturing starch first. The process of refining the material when converted is substantially as in the wet process. The wet process is as it is ordinarily considered, first, treating the grain, grinding it, separating the starch from the offal or feed, which is done ordinarily by means of sieves, and then continue the process as it is ordinarily done in the manufacture of starch in starch factories; then to convert the starch after the same has been treated with a solution of caustic alkali to rid it of the large per cent. of glutin in the grain. The starch is then washed very carefully. That is done to get it in as pure a shape as possible. The next step is to convert this with the action of the different acids. The chief difference is in one case you first convert the grain into starch, and in the other you do not. The main difference in the wet process is you first convert the starch from the corn, and convert that; in the dry process you convert the whole product. We have had considerable experience in what is known as the dry process. The first experience was in putting into operation what is known as the Mambre process, which is an English patent, owned and invented by Alexander Mambre, of London, England. This was in the spring of 1875 in our Buffalo works. We experimented with that process for over two years; in fact, I will say three years.
78 Mr. Mambre furnished a man who came over from England to show us how to work his invention—that was his object

in coming over. Notwithstanding this, and with all the skill and experience we had, we were unable to turn out anything which was successful in any sort of a way, commercially speaking. I am familiar also with all the late patents that have been used. I think there are quite a different number of methods of operating the so-called dry process. I have never been able to distinguish practically any difference in these, so far as making a successful operation. We have made more or less experiments with everything of the kind that is new in our business. We have been obliged to buy a great many patents, and we have also made a practice of investigating such as were offered, with a view of satisfying ourselves whether there is anything that would accrue to our benefit if we should adopt it. In this way I have had brought to my notice a good many different schemes for operating this process. We have had experience in the American works, more especially in a small way, in relation to these different schemes that have been brought to us. The main difficulty of working anything on the dry system, in comparison with the wet, is because of the large amount of nitrogenous matter, which is the basis of the albumen, gluten, oil, &c., natural in the corn; that impossibility of sufficiently getting rid of these materials in order that the product may be sufficiently pure when done and complete to remain in its natural condition without either fermenting or congealing. The expense of the process in comparison with the wet process if one attempts to sufficiently rid the substance treated from these impuri-

79 ties. Another great difficulty also is that there is no known way of making a complete conversion where the substance is treated in the dry process. The main reliance one must have in producing a good commercial glucose must be the perfect conversion, for without these, there is always an expense and trouble, and an inferior product produced. That is true of all that I have ever seen produced by the dry process, or that has come to my knowledge. This is more particularly true where what is known as glucose is produced; that is, the liquid syrup. The great consumption now is of that produce as compared to what is called grape sugar. Referring now to solid matter the trade is exceedingly limited, and it is growing less every day. When you work under the dry process, in my opinion, it is impossible to produce grape sugar that will answer for confectionary purposes, which is getting to be almost the sole consumption of this product. * * * I do not believe it is possible to produce under any circumstances, or by any means whatsoever, a product where you treat under the dry process: that is, a commercial success, or would continue to be so. It is my opinion and my judgment and my experience that the manufacture of glucose syrup and grape sugar cannot be successfully carried on by means of what is known as the dry process. I have spent a great deal of money in experimenting, and this is my conclusion.

Testimony of Dr. T. J. Eaton, given on the trial of a suit at law in the United States circuit court wherein Jacob Michels was plaintiff and George P. Olmstead was defendant and which, by stipulation of parties, is to be used as the evidence of said witness.

80 DR. T. J. EATON.

I am a physician, and have been practicing medicine between fifteen and sixteen years. I am also an anyletical chemist. I made a partial analysis of some syrup given to me by Mr. Olmstead a short time ago. I tested it first to see whether there were any acids; that is, free acids. I tested it for sulphate of lime, and for the presence of magnesia and the acid which the reaction gave, from the changes, I should say it was sulphuric acid. I did not estimate the quantity at all. I did not weigh anything at all. It was only what is known as qualitative analysis. It was only for discovering the impurities in the glucose. I think there were present in the syrup enough of sulphate of lime to render it deleterious to health. The amount of sulphuric acid I cannot tell. Neither can I tell whether it was free acid or the acid salts. I think that the samples that I analyzed would be very injurious to human health. That is my judgment.

The testimony of J. M. Nave, called as a witness on the part of the defendant in the case of Jacob Michels, plaintiff, against George P. Olmstead, defendant, and which by stipulation of parties is to be used as the evidence of said witness in this case.

J. M. NAVE.

I am engaged in the wholesale grocery business in Kansas City, Missouri, and have been about eighteen years. I handle syrups and molasses.

From the appearance of this sample, which you have handed me, I would not call it a merchantable article at all. I would rather not taste it. There is a smell to it that indicates what the
81 taste would be. The appearance of it indicates that it has some sugar mixed with it—cane sugar or syrup. It smells very perceptible to me. But the goods, or syrup, from its appearanee, is not merchantable goods. I am a member of the firm of McCord, Nave & Company.

The testimony of Peter D. Ridenour, called as a witness on the part of the defendant in a case at law in this court, wherein Jacob Michels was plaintiff and George P. Olmstead was defendant, and which by stipulation of parties is to be used as evidence in this case.

PETER D. RIDENOUR.

I am engaged in the wholesale grocery business at Kansas City, Missouri. Our firm name is Ridenour, Baker & Company. I have been engaged about thirty-three years in that business. It is a part of

my business to handle syrups and molasses and glucose. This sample which you hand me in the bottle, I should not judge from the appearance of it to be a merchantable article of syrup of any kind. It don't look like syrup. I certainly would not call that merchantable syrup.

Deposition of L. R. Moore, taken in the case of Jacob Michels, plaintiff, and George P. Olmstead, defendant, in the circuit court of the United States.

L. R. MOORE.

My residence is Kansas City, Mo. I am engaged in merchandising; about 1881 or 1882 I was interested in a stock company for the purpose of erecting a building and buying the machinery for making glucose that was then called the dry process; this
82 building was located in Kansas City, Mo.; as near as I can recollect now, there was nearly $250,000 in the building and the machinery, which had been expended in the manufacture of glucose by this process; Mr. Rodgers was the expert who was to manufacture the syrup after the building and the machinery was completed, and he also superintended the purchase of the machinery and of the putting it. Rodgers reported to me that they had made eight hundred gallons of syrup; I asked him for a sample of it; he said through some mistake the valve was left open in the bottom of the tank, and the sprup all ran out into the sewer; I asked him if he could not get as much as a small phial full of it; he said he could not, and he did not furnish it; that was the last trial that I know of that we made in the manufacture of this syrup; I was fully satisfied the process was a complete failure; we and the parties at Rochester had a meeting at Rochester after that, and went over the situation, and we — fully satisfied that the making of glucose by the dry process was a failure; in order that we might save all we could for the stockholders we organized a new company to make glucose by what was known as the old or wet process; after putting in the necessary machinery, which had cost us about $150,000, it was then found it was not profitable to manufacture by the wet process on account of the high price of corn and the reduction of the duty on sugar; after spending more money than the company had in it, it was abandoned and sold out under a mortgage; having spent about $250,000 for the manufacture of syrup by the dry process we satisfied ourselves that the dry process was a failure, and abandoned the enterprise; there is no manufactory in the
83 world that manufactures glucose by the dry process; Mr. Rodgers, who superintended our works, and who was to be the expert, said to me that he was the same man who was to be the superintendent of the works contemplated by Mr. Olmstead and his company; Mr. Stebbins was an employee of ours as Rodgers' assistant in putting in the machinery and in the manufacturing.

Testimony of Edward P. Stebbins, given on behalf of the plaintiff in a suit at law in the United States circuit court, wherein Jacob Michels was plaintiff and George P. Olmstead defendant, and which by stipulation of parties is to be used as evidence in this case.

EDWARD P. STEBBINS.

I live at Kansas City, Missouri; before coming to Kansas City I lived at Detroit, Michigan; and for the last ten months, while in Detroit, I was engaged as Mr. Michels' bookkeeper; I saw Mr. Olmstead first the second day of March, 1881, in Detroit, Michigan; the first that I knew of any arrangement at all was while Mr. Rodgers and Mr. Michels were in Rochester; I was at home, and after that either a letter or a telegram came from Mr. Harris asking for prices and asking what we would charge to put up a one-thousand-bushel house for the manufacture of glucose at Kansas City. I forwarded it to Mr. Michels at Rochester, and as I understand, it was answered from there. We afterwards received a message from Mr. Harris asking if he brought a party from Kansas City to make a contract that we would show the process. This also, I suppose was answered by Mr. Michels; this must have been the latter part of Febru-
84 ary. After that Olmstead and Harris came to Detroit, I think, about the beginning of March, 1881. We said to Mr. Harris we have established a rule among ourselves that we will not allow anybody to see the process of manufacture of these goods unless somebody is bound to build a sugar-house, for the reason that we do not propose to give this thing away until we had got in a shape to get something out of it.

Cross-examination:

I am engaged in the Rochester works here, at this time. The works are not entirely completed now. They were practically finished about the first day of May, 1882. They commenced running the machinery a week ago last Thursday. I understand the reason that they have not been running is on account of the high price of corn. I heard some talk about changing machinery from the "dry process" to the wet process. I have never known of Mr. Rodgers or Mr. Michels making any glucose by the "dry process" that was fit for sale or for use. I have never seen any made by them that I would say was a first-class merchantable article, and up to the 13th day of June, 1881, I did not believe, and I do not now believe that Mr. Rodgers could make an article fit for sale. Mr. Michels never made any syrup so far as I know further than our experiments.

The arrangement between Rodgers, Michels and myself, if we build the works in Kansas City, was that Rodgers was to have a certain percentage out of the cash and the stock, and I was to have a certain per cent. and Mr. Michels was to have the balance; I mean the stock in the works we were contemplating building
85 in Kansas City, this was the talk we had after Mr. Olmstead left Detroit; we understood that the works which he was

contracting for, were to be built by a company in Kansas City, and that the stock for that purpose would have to be raised; and Michels, Rodgers and myself were to divide the profits between ourselves upon a percentage to be agreed upon afterwards; this matter we discussed after Mr. Olmstead left.

When Mr. Olmstead came to Detroit he said he came to represent certain parties who was contemplating the organization of a glucose company, and he came to investigate the facts in the case, and to go back and report to them; and we exhibited to him the process to enable him to go back and make the report; that, as I understood, was the object of his visit there.

I do not know of any place where this glucose is made in this country by the dry process; it is a much cheaper way of making glucose than by the wet process, and costs less for the machinery; I was not present when the contract was signed by Mr. Olmstead; Mr. Michels, Mr. Harris, Mr. Rodgers and Mr. Olmstead were present; this contract was made with Mr. Olmstead with distinct understanding that provided he could raise the company in Kansas City to erect the works and to get parties to join him in this enterprise and put in money, then this contract was to be turned over to the company, but if his friends would not join him then Mr. Olmstead said decidedly he would build the works himself; he did not say he would carry out the contract to build a two-thousand-bushel house, but that if his friends did not join him in the enterprise he would build a one-thousand-bushel house; it was distinctly
86 understood he should not carry out this contract; he had the privilege of building a one-thousand-bushel house if he chose, but if his friends did not join him, then he was not to build a two-thousand-bushel house, but to build a one-thousand-bushel house; he said positively that he could not, and would not build a two-thousand-bushel house; I heard him say that; I heard him say that he would not be responsible for building a two-thousand-bushel house.

I wrote the letter dated April 17th, 1881; it is a letter to George P. Olmstead, and was dictated by Mr. Michels; this letter shown to me dated April 19th is in the handwriting of Mr. Michels, and was written by him to George P. Olmstead; this letter dated April 11th, 1881, was written by me, at the dictation of Mr. Michels, to George P. Olmstead.

The testimony of Jacob Michels, called in his own behalf on the trial of a suit at law in the circuit court of the United States in a cause wherein Jacob Michels was plaintiff, and George P. Olmstead was defendant, and which by stipulation of parties is to be used as evidence in this case.

JACOB MICHELS.

I am the plaintiff in this case. I reside in Detroit, Michigan, and and have lived there for thirteen years. I am engaged in the machinery business. Our business is the manufacture of wood work and some machinery for sugar manufactories.

This contract was signed by Mr. Olmstead and myself in my office the 5th day of March, 1881. After signing the contract, I came to Kansas City, where the defendant, Olmstead, was then liv-
87 ing, and is now living. At the time that Mr. Olmstead signed that contract we understood he would not be holden on the contract for the two-thousand-bushel house if his friends should go back on him. We understood he was only to be holden for a one-thousand-bushel house personally. Mr. Olmstead, at the time of the signing of the contract, said that he wished it distinctly understood he should not be held personally responsible for a two-thousand-bushel house. I told him no, he should not be held responsible. I told him we understood he could, if his friends went back on him, build a one-thousand-bushel house, and we would hold him responsible for a one-thousand-bushel house.

Cross-examination:

Mr. Olmstead said at the time he signed the contract that it was to be understood that if he signed that contract, he should not be held to build that two-thousand-bushel house, and that was so understood at the time. I understood at the time that the two-thousand-bushel house we were negotiating about, was a house to be erected by a corporation to be formed in Kansas City. That was the way I understood it. He came there to investigate the manner of making this article, and he talked about a one-thousand-bushel house. We suggested a two-thousand-bushel house with the understanding if his friends would not stand by him, and build the two-thousand-bushel house he was to be let off on the contract, and build a one-thousand-bushel house. There was no proposition that he build a two-thousand-bushel house. It was understood he should not build such a house. The two-thousand-bushel house was the one to be built by the corporation. As a matter of fact, he did not
88 negotiate for a two-thousand-bushel house; he told me distinctly he would not.

Testimony of C. T. Rodgers, given on behalf of the plaintiff in the trial of a suit at law in the circuit court of the United States, wherein Jacob Michels was plaintiff and George P. Olmstead was defendant, and which by stipulation of parties is to be used as evidence in this case.

C. T. Rodgers.

Cross-examination:

I was present at the time the contract in suit was signed by Mr. Olmstead and Mr. Michels. No one was present except Olmstead, Michels, Harris and myself. I was in Rochester, I think, the next Monday after the syrup was made in Detroit. I went there to see about a contract with the Rochester people for the purpose of putting up their works in Kansas City. Michels knew that I was going. I cannot say I had his assent. I received some telegrams from him while he was in Kansas City.

After Olmstead had been in Detroit two or three days he said he could raise a company, and build a two-thousand-bushel house. He had been talking about building a one-thousand-bushel house. That was the kind of a house he proposed to build. I cannot say whether he did or did not propose personally to build a two-thousand-bushel house. Mr. Olmstead changed his base so often while he was there, I cannot speak distinctly what he did say. One thing I do remember that he did say, and that was if he could not
89 raise this company and build a two-thousand-bushel house, that he should build a one-thousand-bushel house personally. He said this immediately after he raised up from the table after signing this contract. As he raised up from the table he made that remark. I remember of having a conversation in the office of Peak & Yeager in the presence of Mr. Hall, Mr. Olmstead, Mr. Harris and some others in regard to this contract, and Mr. Stebbins was there also. That was in March of this year. I don't remember whether I said there in the presence of those gentlemen at that time that it was understood at the time that Olmstead signed this contract that unless a company was raised here in Kansas City, that Olmstead was not to be bound by the contract individually for the two-thousand-bushel house, but he was to build a one-thousand-bushel house.

Testimony of John Hall, given in behalf of the defendant in rebuttal in a suit at law in the circuit court of the United States, wherein Jacob Michels was plaintiff and George P. Olmstead was defendant, and which by stipulation of parties is to be used as evidence in this case.

JOHN HALL.

I was present in the office of Peak & Yeager at Kansas City, in March last, in which, and at which place and time, Mr. Olmstead, Mr. Harris, Mr. Rogers, Mr. Stebbins and Mr. Yeager and myself were present. At that time in the presence of those gentlemen Mr. Rogers said with reference to the personal liability of Mr. Olmstead on this contract that Mr. Olmstead objected to signing the contract; that he was not able himself to build a two-thousand-
90 bushel house, and that they told him then and there, that that should not bind him, unless he formed a company; that he would not bind himself under any circumstances, but that he signed that contract as a preliminary matter for the purpose of seeing the operation of the machinery and material.

Testimony of George P. Olmstead, given in behalf of himself in rebuttal in a suit at a law in this court, wherein Jacob Michels was plaintiff and George P. Olmstead was defendant, and which by stipulation of parties is to be used as evidence in this case.

GEORGE P. OLMSTEAD.

I was present at the office of Peak & Yeager in March last, at which time Mr. Rodgers, Mr. Hall, Mr. Stebbins and Mr. Harris were

present; Mr. Rodgers in that conversation said distinctly that I was not to be individually responsible on that contract; I was not to be held on the contract unless a company was formed; he also said when I took the pen to sign it, I said: "Gentlemen, with this understanding that I am not to be held individually responsible, I sign this paper; then he said—Michels said: Oh, yes."

Testimony of B. L. Harris, given on the part of the defendant in rebuttal, in a suit at law wherein Jacob Michels was plaintiff, and George P. Olmstead was defendant, and which by stipulation of parties is to be used as evidence in this case.

B. L. HARRIS.

I was present at a conversation in the office of Peak &
91 Yeager in March, 1882, at the time that Mr. Rodgers, Mr. Olmstead, Mr. Hall, Mr. Stebbins and myself were present. Mr. Rodgers, in speaking of the personal liability of Mr. Olmstead under this contract at that time, said it was distinctly understood that this was a preliminary contract. That Olmstead was not to be held responsible under this contract if the company was not formed.

The following letter of Jacob Michels to George P. Olmstead, identified in the testimony of E. P. Stebbins, and used in the trial of the case of Jacob Michels against George P. Olmstead in the circuit court, and which by stipulation of parties may be used as evidence in this case:

DETROIT, MICHIGAN, *April 19th*, 1881.

George P. Olmstead, Kansas City, Missouri.

DEAR SIR: * * *

As for Rodgers, he is no more to me, and I would take no more notice of him than I would of any worthless thing, and if I ever shall meet him at your city I shall give him a setting out, as I have many facts that have come to light, and one sufficient to send him to State prison; but such a rascal will receive punishment, and how it is that the Rochester Company takes so much stock in him is a mystery to me, unless it takes a dirty man to do dirty work, and I think they will get their full money's worth before they get through with him, as he is neither a man of no moral principle about him, and far from being a mechanic or an expert, as he claims to be, and the Kansas City folks will find it to be so.

All that Rodgers knows and can talk about is of theory, but
92 not practice, and he is very careful not to give any reference where he has been employed, and any business dealings that he may have had. He has certainly established a most ignominious reputation with me, and though I shall keep him before the public as long as I could, so at the same time give him rope enough he would hang himself. * * *

Yours truly, J. MICHELS.

DETROIT, MICHIGAN, *April 27th*, 1881.

George P. Olmstead, Esq., Kansas City, Missouri.

DEAR SIR: * * *

As to the building, you must certainly be mistaken as I have never heard Rodgers say any less than a seven-story building. It would cost you more to handle your goods in a five-story building than the entire investment and interest than it would for a seven story. Rodgers has of course left me, but he has by no means given the thing away, as according to his own story he gets $26,000 for one year's services in superintending the construction of, and starting the works, and as you knew these works were to go up anyway, it can have little effect on ours different from what we expected, except that we no longer control Rodgers. This I cannot help. * * *

Now, it looks to me as though the best thing for you to do is to get your men together, and put this to them in the right light, deal out your stock, and go to work. * * *

Very respectfully yours, J. MICHELS.

93 J. Michels' machine works, corner Fort and Beaubien Sts.

A specialty of grape sugar machinery. Complete works erected and operated and results guaranteed by our new dry process. Also by the ordinary starch process.

DETROIT, MICH., *April 27th*, 1881.

Geo. P. Olmstead, Esq., Kansas City, Mo.

DEAR SIR: I am advised that Rogers is in your city and endeavoring to bring you and your company to think that I am unable to complete my contract and produce the goods as guaranteed-and to induce your people to join the Rochester Company. Now, I have every reason to believe that you are a man of good judgment, and it will be only necessary for me to call attention to his talk with you when here, and the fact that he drew up the contract himself, to convince you that if he is taking this course, he is a bad man to take stock in. I know whereof I speak, and am ready at any time to go on with the contract whenever you say the word. Not only that, but I am anxious to get to work, and I don't ask any more than the contract calls for until the goods are produced, as per agreement.

The course he (Rodgers) has taken in his dealings with me are enough to satisfy any straight man as to what he is. His advice to put in only a 1,000-bushel house is like Hamlin offering to sell his works. He don't want opposition. He has proven his lack of confidence in himself in more ways than one, and I assure you any important discoveries he may claim to have made are of no account whatever. He has yet to produce his first good goods alone, and when it comes to the point he will find there are men who don't tell

all they know. So, don't allow yourself or your friends to be
94 frightened by what he may say. And whenever you say the word, I will come on for final arrangements.

Trusting I may hear from you soon, I am,

Yours truly,

J. MICHELS.
S.

I would like to meet Rodgers in the presence of some of the parties he is trying to bulldose, and we would soon see who had the long end of the rope.

J. MICHELS.
S.

J. Michels' machine works, corner Fort and Beaubien Sts.

A specialty of grape sugar machinery. Complete works e ichels
and operated and results guaranteed by our new dry p ending
Also by the ordinary starch process. not sure
o would
DETROIT, MICH., *April 11th*, e these
Geo. P. Olmstead, Esq., Kansas City, Mo. letter or

DEAR SIR: It is now over a month since our contract was nd, as I
and I have waited patiently since mine of the 28th ult. (fou rds re-
days), each mail expecting something from you. As yet have n arty
ing. Now, it is important, very important, that we get to wo ess.
We have little enough time at best to get this through before co nd
weather sets in, and you can well see the importance of my getting re
through my work before that time. Now, I am willing to make
due allowances for your trouble in connection with your fire, and also for a reasonable delay in consequence of the death of your friend Deardorf, but it does seem that a month ought to be ample time in which to get matters straightened out, and that by this time you should be able to say just what position you pro-
95 pose to take in the matter. I am as I said ready to go on just as agreed at any moment. Now, if you have not already done so, try and get your men together and have this matter decided, and let me know what I am to expect, and when I am to come on to make final arrangements and commence work. Your early attention will oblige

Yours truly,

J. MICHELS.
S.

J. Michels' machine works, corner Fort and Beaubien Sts.

A specialty of grape sugar machinery. Complete works erected and operated and results guaranteed by our new dry process; also by the ordinary starch process.

DETROIT, MICH., *March 26th*, 1881.

Geo. P. Olmstead, Esq., Kansas City.

DEAR SIR: We chanced to run across the two enclosed letters today, and I enclose them for your perusal, that you may make

"assurance doubly sure," that there will be no question about this going through, as soon as you are ready to go on in accordance with our arrangements. I am anxious to get to work, as I think it of great importance that we get in ahead of the other concern, if they do go on, and am looking each mail for word from you to come on to close with the Co. I have an experienced draughtsman at work on the plan of the building, and it is promised by Tuesday next. I would thank you to return the enclosed letters, as I may want to use them in the future. Trusting I shall hear from you soon, I am,

Very respectfully yours, J. MICHELS.

S.

Defendant's abstract of evidence is in words and figures as follows:

United States Circuit Court at Kansas City, Missouri, October Term, 1888.

GEO. P. OLMSTEAD } vs. JACOB MICHELS. } No. —.

Defendant's Abstract of Evidence.

Defendant said he had lived in Detroit, Michigan, 18 years; was a practical machinist engaged in making various kinds of machinery; signed the contract in controversy March 5. The works would have cost $60,000 and there would have been a profit to him under the contract of $21,000. He was requested by plaintiff at Detroit to go to Kansas City. He got there the 12th or 13th of March. He went to inspect the building he was to use in putting up the machinery. It was no part of his business to form a company. Nothing was said at the time the contract was signed that it was not binding. He attended a meeting of several persons in Kansas City; met Leach and Olmstead at the latter's office the next day.

Leach had a schedule of the machinery; said he had been to neighboring machine shop, and that prices were too high; plaintiff wanted to know if he would not take 15 per cent. on whole contract. He said no.

The contract was signed Saturday evening. It was talked of in the morning, and the plaintiff called after dinner to see if it was drawn up. It was not. Plaintiff when he signed it said, "Now, I understand I will not be holden on this contract for a 2,000-bushel house if my friends go back on me." We understood he was only holden for a 1,000-bushel house personally.

He had made machinery for the wet process, but had made none for the dry. Plaintiff talked about building a 1,000-bushel house which could be built for $46,360.10. We figured both ways. A list was made for a 1,000-bushel house.

There was no talk about the profit on machinery defendant was to buy nor about manufacturer's profit; never stated the machinery he was to buy was to be put in at cost.

C. F. ROGERS, a mechanical engineer:

The cost of furnishing and putting up the machinery called for by the contract would be a little over $60,000. He was in the employ of defendant and drew the contract.

E. F. STEBBINS said he was in the employ of defendant at the the time the contract was signed. At the time he testified he was in the employ of the Rochester Grape Sugar Co., at Kansas City.

Q. You may state what you know about this matter—what w said to you—what you heard.

A. The first I knew of this arrangement at all was while Mels and Rogers were in Rochester. I was at home that day attding to business. I think then either a telegram or letter, I am t sure which, came from Harris asking prices—asking what w would charge to put up a thousand-bushel house to manufactu these goods in Kansas City. I am not certain whether it was etter or telegram. I forwarded it to Rochester to Michels, a , as I
98 understand, it was answered from there. We afterwa s received a message from Harris asking if he brought a rty from Kansas City to make a contract if we would show the proess.

Witness said plaintiff got to Detroit Wednesday morning, d the contract was signed Saturday night; that plaintiff was the in and out every day, and spent possibly half or more of his tim there. On Wednesday he told Harris that we would not allow anyone to see the manufacture of these goods until some one was bound to build a sugar-house. Harris told me Olmstead understood this. It was thoroughly understood that the contract was to be signed before we would make the goods. It was talked over generally. Plaintiff knew the contract was being drawn. He asked in the forenoon if the contract was ready. Witness said he conducted the experiment. The object of it was to show the plaintiff that thirty-two pounds of syrup could be made from a bushel of meal. It was understood that they were then working for quantity and not for quality. He stated that a merchantable quality of syrup could be made by the dry process. The sample shown contains a deposit of sugar; probably the conversion was carried too far. The contract was made with Olmstead with the distinct understanding that provided he could raise a company in Kansas City to erect the works and could get parties to join him in this enterprise and put in money, then this contract was to be turned over to the company; but if his friends would not join him then, he said decidedly, he would build the works himself, with certain modifications, and the modifications of it were these: Provided his friends would not join him he was to be ready to build a 1,000 bushel house at the figures already given him. The contract was to be the same, with the exception that it was to be changed to a 1,000-bushel
99 house, and the prices were made accordingly.

ROGERS recalled:

First, a 1,000-bushel house was talked of at Detroit, then a 2,000-bushel one; he drew the contract. Plaintiff asked witness if it was done before he had it finished. The schedule was first made for a 1,000-bushel house amounting to $40,000 and some odd dollars; it did not quite double for a 2,000-bushel house, from the fact that some parts were increased in size and some duplicated. The prices of the machinery were discussed with Olmstead; he thought several things were too high. Olmstead said to witness, "Now, why not make a percentage on this machinery; let me buy myself at what rates I can." Witness replied that "We cannot do that." It was not understood that Olmstead was not to be bound by the contract.

Rideout said he was foreman of the Rochester Grape Sugar Co. at Kansas City; that he was with the Windsor grape sugar works 3 years; they manufactured by the dry process; he manufactured it three years; they made sugar and syrup; he had a sample that was made 22 months ago. "I would like some of these experts here to taste of that and see whether they could distinguish that and me."

V. S. Smith, of Geneva, Ill., said he was engaged in the manufacture of glucose at that place; had been for four years in the business; made it by dry process for 2 years at Wakeville, Canada, and by the wet process at Geneva. A good wholesome and merchantable article of glucose can be made by the dry process; had produced 37.3 pounds per bushel, for a period of 6 months, of grape sugar by the dry process. Grape sugar is a standard. It is 100 as dense as can be made. In Canada he made by the dry process about one and a half tons per day. Dry process is undoubtedly the simplest, requiring less labor and less machinery.

Plaintiff, on his examination, said:

"Then, after this was signed, I don't know, but a cold chill run over me, that I had perhaps placed myself in a position that they could injure me, and I remarked at once there is a great deal more to be added to this before it can be a contract." After he got back to Kansas City, Deardorff, who was "going in with us," was dead, and the building on Union Ave. belonging to Leach, Hall & Olmstead had been burned down. No company was formed. When defendant came he went down to Gillis house and looked it over. Michels decided he could not use that, it was out of repair, and it was not strong enough and not well adapted for work of this kind. From there we went around the city to find a place that would be suitable; we went down to the east levee and we could not find water there; we went down to McGee's addition in the afternoon, and finally went to the Kaw river, over in Kansas, and about Turkey creek, and we found a place there that would be a suitable place to put up a warehouse. On Monday "we met at the Lindell hotel—Hall, Leach, Willard, Harris, Michels, and myself"—the object of that meeting "I suppose" was to make arrangements to form this company. "Well, the subject was brought up; I pulled

out and showed this shedule of the machinery and that contract or that memorandum—you call it a contract—and I think it was read to them, and Mr. Leach began to get weary; he didn't like it; he didn't like the prices of the machinery, as I understood it; it was determined there was nothing of it, it explained nothing,
101 and he says, is this all the contract; is this all we are to have of this machinery? He says, I don't want to go any further with it. Leach then complained of the style of the engine and the prices. "I got up and said Why, Mr. Leach, these prices have nothing to do with this thing whatever; we are to buy this machinery ourselves as low as we can buy them; we have the privilege to buy them, and this whole thing amounts to nothing."

Q. What amounted to nothing?

A. This contract.

Q. Was anything done that night with reference to forming the company?

A. Nothing; he didn't go away exactly in a row; he went off not well pleased with the thing; it looked bad.

Q. What was the objection raised as to the price of the machinery by Mr. Leach?

A. As to the cost of the machinery, and he didn't know what [redacted] were going to get.

Q. It was not sufficiently defined in the contract?

A. No, sir. We met Tuesday (next) morning at our office, W[redacted] Kansas; Hall, Leach, Michels, Harris, and myself were there; we had a considerable talk. I said, Mr. Michels, you have not listed this machinery as you agreed to, or as Rogers agreed; you have got the figures too high. Now, I said, here is a vaccum pan that is too high; I can buy vacuum pans for a great deal less money than that; I was told that there was a pump belonging to that and it is not included; there was no vacuum-pan pump. Now, I said further, here is a lot of wheels, these wheels that the belts run on; you have got two prices on these wheels. No, he said, Rogers has made some mistake there. After this plaintiff testifies as to Leach's finding fault as to quality of goods made by defendant at
102 Detroit; he testifies that after signing the contract and before leaving Detroit Rogers told him Harris was to get something if "he makes anything."

Q. State what portion of this machinery it was that this company, when formed, was to have the privilege of furnishing from other sources?

A. The way I understood it was all of it. I told them positively that I knew some of these things were too high—that I should take—we should have the privilege of buying elsewhere.

Cross-examination:

Plaintiff said he had lived in Kansas City 11 or 12 years; had been engaged in lumber business; had speculated in mines. He said he read the contract before signing and knew what it con-

tained. He understood Michels did not know how to make the goods. Plaintiff was there Wednesday, Thursday, and Friday and until late Saturday before signing the contract. It was in June or July they found out the corporation could not be organized.

Q. You say that Michels was to make nothing out of the contract. Can it be possible that you have written him a letter saying that you thought $15,000 was all he ought to make out of that contract?

A. That was a compromise.

Q. You were willing to compromise this contract that was binding on nobody and was understood to have no force or effect in any event? You were willing to compromise so that Michels could go on and make $15,000 out of it?

A. I was willing he should have $15,000 if he could put up the works—construct the glucose works—that was myself personally. He said the $15,000 would be better for Michels, because it would be certain.

Q. On the 11th of May, 1882, did you not write Michels a little letter to go ahead, "as I agreed with Rogers as to the cost of the machinery, but on no other basis"?

103 A. I was speaking for the company.

Q. Don't you say "I"? Don't you say plainly to Michels that you are willing to go on and build it?

A. I did not mean myself. It was understood there was any talk about myself personally.

Q. How did it happen that the word "eight" (in the contract) was scratched out and the word "seven" written in?

A. I told Rogers that I thought $8,000 was too much.

Q. That was reduced $1,000 at your suggestion?

A. Yes, sir.

Q. I see there is another interleneation in this contract. This expert, the way the contract seems to have been written originally, was for five years, and that is scratched out—the five years—and there is inserted in its place "until such time as the company should want the services of the expert"?

A. Yes, sir.

Q. At whose suggestion was that made?

A. At my own.

Q. At whose?

A. At my own.

Q. Have you that syrup here?

A. Yes.

Q. You are certain that this is corn meal in the bottom? You have sworn to it two or three times. You are certain this is corn meal—that sentiment?

A. I did not say it was corn meal.

Q. What did you say about corn meal in connection with that syrup?

A. I said my wife said it was. She said this is going back to corn meal. I don't think it is corn meal myself.

104 Q. Is it not your judgment that that deposit is sugar? It is not anything unusual to see a deposit of sugar in molasses.

A. I understand it is not unusual.

Redirect examination:

It was represented that by this process it could be made into syrup in 24 hours; that 35 pounds could be got from a bushel of 56 pounds.

Recross-examination:

At the experiment at Detroit they got syrup out in 12 hours; they had 24 pounds when he left; they said there was some not drawn off. As to this offer of $15,000 profits contained in the letter, he only consulted Mr. Winn.

The two letters referred to in the cross-examination of plaintiff are as follows:

KANSAS CITY, *March* 23, 1881.

Mr. J. Michels.

DEAR SIR: Yours came to hand this a. m. I have been making some inquiries about machinery since you left. A party in the business here tells me that the 12-run stone, including Hurst frames complete, ready for the belts, would be worth about $4,800; the bolts from $15 to $1,600. All the wooden tubs could be made here. You are in error in regard to the boiler-builders having seen or known anything in regard to your prices. I think the best way to get at this now will be for us all to have the works built at the lowest rates that we can get, and then after they prove a success, as per our understanding, add so much to the cost as will give you, say $15,000 for your margin. I find the figures so exorbitantly high on many things that nobody would ever be satisfied.

105 This would be a better lay for you than our first talk of cost and manufacturer's profit, and would be fair for all. This is the way we figure—from the known to the unknown. If the known things are so high we have a right to believe that the unknown are also, and if this is true the bill is too high by nearly one-half, say 40 per cent. The bolting chests are 150 per cent. above cost. We want a fair shake and are willing that you should have a big bonus, even for a first house, but the thing looks to- big now.

Yours truly, GEO. P. OLMSTEAD.

In pencil the following P. S.:

We feel that this proposition, even if it costs us exactly the same as your figures, would be more satisfactory to the company, and we want all satisfied so as to work harmoniously and to success.

WINN.

KANSAS CITY, *May* 11, 1881.

Mr. J. Michels:

I am willing to go ahead as agreed with Rogers as to cost of machinery, but on no other basis.

Yours truly, GEO. P. OLMSEAD.

Plaintiff's letter of April 15, 1881, filed by him contains this: "It begins to look as though you folks had deceived me, and you know that if my signature was obtained by such means it will not hold."

Harris testified on the trial and also by deposition. In the letter he says after this contract was executed he assisted in building the Rochester grape sugar building at Kansas City, built to work
106 by dry process. He means he was in no conspiracy with Rogers, Michels, and Stebbins to cheat plaintiff; that so far as his dealings with plaintiff were concerned they were open and honest.

The men at Kansas City did not rely on my statements, as he was a stranger; he made no attempt to conceal his interest; Olmstead made no objections when he told him of it; plaintiff saw the syrup made and seemed satisfied; Michels gave as a reason why they would not tell how it was made that there had been so many there to talk with them about putting up works and wanting them to show this process that they had made a positive arrangement that they would not show this process until some one became responsible for the construction of the works; the contract was read over before signing for all of us; Olmstead read it for —, and then Rogers read it aloud; before signing Olmstead spoke about the prices being an enormous sum.

None of the persons called by plaintiff as experts pretended to know anything about making syrup by the dry process except Hamlin. Morse says he was connected with the Rochester Company; that he is not an expert; knows that the company tried both ways and made none by either process and finally sold it out.

C. O. TICHENOR,
Solicitor of Defendant.

107 GEORGE P. OLMSTEAD, being duly sworn as a witness in his own behalf, testified as follows:

Direct examination.

By JOHN L. PEAKE, Esq.:

Q. You are the defendant in this case?
A. Yes, sir.
Q. You live in Kansas City?
A. Yes, sir.
Q. In what business are you engaged?
A. I am a lumber dealer.
Q. Are you acquainted with the plaintiff, Mr. Michels?
A. Yes, sir.
Q. How long have you knew him?

A. I saw him a few times in Detroit and two or three times in this city.

Q. When was the first time that you ever saw him with reference to signing this contract?

A. March, 1881; about the first of March. It was between the 1st and 6th.

Q. Had you ever seen him before you signed that contract?

A. No, sir.

Q. Than before you saw him that time at Detroit?

A. No, sir.

Q. Mr. Olmstead, I will get you to state to the jury in detail from the beginning what lead you to sign that contract. Those things which preceded it, the conversations you had with Mr. Harris and others; all that preceded the signing of that contract.

A. In the latter part of February Mr. Harris, with a gentleman by the name of Deaver, came to our office in West Kansas and inquired for Mr. Leach. They staid there a little while and finally told me what their business was.

108 That they had a company partly organized, I think, to manufacture glucose, and the- wanted to see Mr. Leach, I suppose, to induce him to go in with them. They explained to me what they had and showed me a sample of what they could make.

Q. Was this sample that was showed to you syrup glucose?

A. Yes, sir. They told me something about the cost of manufacturing it and I think Mr. Harris told me then that parties in Detroit owned the secret. It looked very favorable and finally I was invited with other- to attend a meeting at the Lindell hotel.

Q. For what purpose? What was the object of the meeting, Mr. Olmstead?

A. I suppose it was——

By TICHENOR: Never mind what you suppose—what was the object?

A. I was simply notified to meet some gentlemen at the Lindell hotel in regard to this glucose matter, and I met there with those gentlemen——

By PEAKE: Just state who was present.

A. Mr. Harris, Mr. Deavers, Mr. Chase, and Mr. Leach, and Mr. Winn, and I think there was another party—I don't remember the other party's name—and myself.

Q. Just state what was the subject discussed there—the object of the meeting.

A. The cost of an house to manufacture the goods, the cost of the machinery, and the figures were given of the different items.

Q. By whom were they given?

A. I think Mr. Harris gave those figures.

Q. What was the result of the meeting?

A. The result of the meeting was that Mr. Harris wanted the parties there to subscribe stock and we declined; we said it was premature, we didn't know anything about it.

Q. Stock in what?

A. Stock he was raising; he had a company partially formed.

109 Q. Partially formed for the manufacture of glucose?

A. Yes, sir; and it was suggested, I think he said, that some one should go with him to Detroit to see this process and inquire into it, and find out on what terms it could be procured and at the same time stated that he would pay the expense of the person going there if they didn't think—if they didn't say—it was a good thing, and the company was not formed. The company selected me to go, and the others proposed then to pay the expense.

Q. Was the company formed that night?

A. No, sir; not at that time, but the amount of the stock was agreed on, but there was no writing; the stock was apportioned off to different parties as to what they would take.

Q. What sized factory was contemplated?

A. A factory of a thousand bushels.

Q. Just state what was done after that?

A. The company selected me to go to Detroit and Mr. Harris and Mr. Deavers went also. When we got to Detroit Mr. Harris took me over to this machine shop of Mr. Michels and introduced me to Mr. Michels and Rogers and Stebbins, stating what we had come there for, of course. I supposed that was previously known, however, and I was turned over to Mr. Rogers.

Q. This gentleman who testified here?

A. Yes, sir; the first question that Mr. Rogers asked was, What stock are we to have in this thing. He said, There are three of us.

Q. Did he name who they were?

A. Mr. Stebbins, Rogers, and Michels, these three, and he said that they wanted an interest in the factory. I told him that no provision had been made for them; that the stock had all been agreed upon. Well, he says, you needn't go any further; we won't go any further; we will stop right here. As I had gone so far I said, Perhaps I could arrange it so that they could have some; possibly some of the members didn't care very much about it, and I asked him how much he wanted. He said ten thousand

110 dollars interest in a thousand-bushel house. He said, Why not build a two thousand-bushel house. I told him we had talked only a thousand-bushel house. He said, It will cost proportionately a good deal less to build a two thousand-bushel house than it will a one thousand-bushel house. I told him we had not talked anything other than a one-thousand bushel house, and we were there, perhaps, two days and I thought it was about time for me to go home. I said, We have talked a good deal about this and I would like to see you make some of these goods.

Q. Make what?

A. Glucose. They had showed me a lot of samples that looked very fine. I made a good many inquiries about them, all I could think of, and one in particular, how long they had been manufacturing it. Mr. Rogers told me that they had been manufacturing it from six to nine months; it did not change color and it seemed to

me it looked very nice. Well, when I wanted to see the goods made, I had come up there for that purpose—by the way, I want to state here, before we called that meeting at the Lindell hotel Mr. Harris told us there that Mr. Rogers was the expert and would put up the works and run them thirty days and then teach his successor how to run them. Well, Mr. Rogers says: "We cannot allow you to go into this room. We have a contract with each other; we have agreed with each other that no man shall go into that room outside of the members unless the contract is signed," and he pulled this paper out of his pocket. At any rate, he produced it at once; there was no delay.

Q. You mean this paper (showing contract to witness)?

A. Yes, sir. This memorandum, this contract as you call it, and he showed it to me—he handed it to me—and I commenced reading it, and I says, Here, this is Mr. Michels and myself only. How is this? There was three of them; Rogers says, Inasmuch as you are alone here, we thought it best to let Michels represent us three, and you represent the Kansas City people. Well, I read down
111 and then I saw it was for a two-thousand bushel house, and I said, This is farther than I can go. I cannot sign for any such money as that. It is beyond my reach entirely. I won't sign it. Rogers then said, Sign this, and if the company is not raised we will not hold you responsible. If the company is not raised or formed we will not hold you responsible. I don't remember just exactly the words, we will not hold you responsible. Then I signed it. By the way, Mr. Michels name was already there, I think. I then signed it.

Q. Mr. Michels had already signed it?

A. I think he had. I then signed the paper.

Q. Was there anything else said at that time about the purpose of this contract or the object of it?

A. The signing the contract was simply to let me into their room, as I understood it. I had gone to Detroit with the assurance that I should see that stuff made. When I got there they met me with these conditions, that I could not see it until some kind of a contract was signed, and to keep that agreement with themselves, they asked me to sign that, and, as I told you, I refused to sign it until they positively assured me that I should not be held responsible. Then, after this was signed, I don't know, but a chill run over me that I had, perhaps, placed myself in a position that they could injure me, and I remarked at once to Mr. Michels, There is a great deal more to be added to this before it can be a contract. Then he says, You and Harris go by yourself and write up what you want—such a contract as you want—and Rogers and I will go by ourselves and write up such a contract as we think we ought to have.

Q. Who was that contract to be between? The one that was to be written up?

112 A. It was to be for the company when formed, as I understood it. I did not understand there was two sides to the company, but it was to be one company, a company here for the manufacture of glucose. I think we staid there until about five

o'clock in the afternoon and I said I wanted to go home. It was understood that Mr. Stebbins was to go and clean up a little previous to our going in and getting it ready for Monday morning. I think this was Saturday night. Monday morning came and we went into that room, Mr. Stebbins, Mr. Rogers, and myself.

Q. Where was Mr. Deavers?

A. Mr. Deavers was not in this arrangement.

Q. Did not Mr. Deavers go there with you?

A. Yes, sir; he was around there with us for two or three days; then after that he didn't have anything more to do with it.

Q. He didn't go in with you?

A. No, sir; we went into this room and they had a sack of meal there. Do you want me tell you all about it?

Q. Tell what they had there?

A. They had a sack of meal; they said it contained a hundred pounds; two bushels of sifted meal; they weighed half of it and put it in a tub and put some water with it and something else, I don't know what it was. Mr. Rogers mixed up a portion of it and put into a vessel called the converter. Do you want me to describe that?

Q. Yes, sir.

A. This stuff, this meal, was mixed up with water and the other ingredients, and this, of course, was poured into it; no, it was drawn in by a little siphon; no, I don't know in what way it was put in; and after a little while Mr. Stebbins kept watching it and finally it was taken out and he let — down into a tub, then it was taken from there and put into some other tubs in a cloth. It
113 was poured in on a cloth and was drawn through, strained through. After it was strained the liquor was what they called sweet water before they took it out of the converter. I guess that was the neutralizer. It was to neutralize the stuff. It was not right when it came out. They had to have something to kill the effect of the first stuff they put in, whatever that was. After it was drawn through these cloths it was then put into large tubs filled with what we call boneblack. This sweet water, you understand, ran through this boneblack after it was brought out of this boneblack; it run out at the bottom from a little hole; it was drawn into a vacuum pan. Now, do you want me to describe the vacuum pan?

Q. Yes, sir.

A. It was a pan for boiling the sweet water, The sweet water is put into this vacuum pan and, I think, Mr. Rogers said they had in the bottom to boil the sweet water with the steam. This air pump is to exhaust the air out of this vacuum pan in order to boil this stuff at a lower temperature. I think they boil it at a temperature of 130 to 140; possibly 150. I don't know the number of degrees it was.

Q. Did they furnish you or did you get any of the product that came out of this experiment?

A. Yes, sir; after it was all done Monday night I guess it was; I think it was Monday night; it was taken out of this vacuum pan;

they boiled twice and they had a couple of pails, ordinary wooden pails, within two inches of being full, after, I should think. Mr. Harris and I went over to a grocery store and bought seven bottles and filled them up. I brought four of them home and he brought three.

Q. What did you do with them when you brought them here.

A. I gave one to the teacher of chemistry at the High school, one bottle I gave to Dr. Eaton, and the other I have. The other bottle, I don't know what became of it.

114 Q. Where did you keep it?

A. I kept it at my house.

Q. From the time you got it and gave it to Dr. Eaton, was it in your possession?

A. Yes, sir; it was never out of my possession.

Q. Open or closed?

A. Closed.

Q. Corked?

A. Yes, sir.

Q. State whether or not this substance that you gave to Dr. Eaton was a portion of the syrup that was manufactured by Mr. Michels and Mr. Rogers at Detroit at this time.

A. It was unless I was mesmerized. I took it out of the pail myself.

Q. Have you any of it with you?

A. Yes, sir.

Q. What was the color of that fluid when it was first manufactured?

A. It was very clear—very handsome for a syrup. There is the condition as it is now (showing a bottle of syrup). I guess my wife first called my attention to it. She says that stuff you bought at Detroit is turning into corn meal. It might have been thirty days after I brought it home.

Q. How long has it been since it was made?

A. That was made on Monday evening, March 10th, 1881.

Q. And you have had it in your possession ever since?

A. Yes, sir.

Q. When you came back from Detroit did you have any conversation with these gentlemen who were to form the company?

A. Yes, sir.

Q. You showed them this syrup?

A. I showed them the syrup. I took the syrup home first; when I came back home one of my old friends I found was dead

115 and this fire had taken place down in West Kansas of ours.

Q. What was that frien- that was dead?

A. Mr. Deardorff, one of the parties that was going in with us.

Q. You spoke of the fire?

A. That was the fire on Union avenue?

Q. Whose building was that that was burned down?

A. Property belonging to Leach, Hall, and Olmstead.

Q. State whether or not any company was formed after you returned from Detroit.

A. There was not. Mr. Michels and Mr. Rogers told me before we left Detroit that this was—by the way, there is one point I want to call attention to. I never saw Mr. Rogers after the noon on Monday. We met in this room on Monday morning to make these goods and I don't think I saw him again until the following May or June.

Q. When you were there talking about signing this contract, who did you understand from Michels and Rogers were interest- in that?

A. They told me there was three of them. Mr. Stebbins, Mr. Michels, and Rogers were partners in this business. The three were the sole owners of this secret; that nobody in the world knew anything about it excepting a man at Windsor, who knew a little something about it, but not very much.

Q. Where is Windsor?

A. In Canada, near Detroit.

Q. They told you that they were the only ones who knew of this secret excepting this man?

A. And he didn't know very much about it. He knew something about it.

116 Q. As it was understood between you, Mr. Stebbins and Rogers was to be the experts for directing these works and running them.

A. Mr. Rogers was. That was the understanding, that he was to put up the machinery. Mr. Michels told me he knew all about it, he had been in every sugar-house in the United States, and he thoroughly understood his business.

Q. When you returned to Kansas City, Mr. Olmstead, did Mr. Michels afterwards come here?

A. They told me, Michels and Rogers, that they would come to Kansas City very soon.

Q. For what purpose were they to come?

A. For the purpose of perfecting this arrangement.

Q. What arrangement?

A. To form this company, as I understood.

Q. State whether they came or not.

A. Mr. Michels came on Sunday morning, I think, but Mr. Rogers did not come with him, and he was very much concerned about him. Mr. Michels wanted to know if Mr. Rogers had come. We had not seen Mr. Rogers. On Monday morning he commenced telegraphing for Rogers. He found that Rogers was in Rochester, N. Y. I asked him how he could arrange it, as Rogers was the expert—how he could get on. He was very much concerned. I says, How are you going to move, Mr. Michels, if Mr. Rogers had left him? Well, he didn't think he had left. Well, I've not said anything about the Gillis house. Mr. Harris and Mr. Deavers represented to us that they had an option on the Gillis house to rent it.

Q. Where is the Gillis house?

A. The Gillis house is down on the east levee, not very far from the bridge.

Q. In Kansas City?

A. Yes, sir.

Q. What was it Mr. Harris and Mr. Deavers represented
117 about the Gillis house?

A. They represented that they could rent the Gillis house, and that Mr. Hopkins would take five thousand dollars of stock. There was something peculiarly valuable about that Gillis house. There was a spring under it, and it was a matter of considerable importance to have cold water. There was a spring under the house that would furnish all the water that would be needed for the water to mix with the corn. When Mr. Michels came, Mr. Harris, Mr. Leach, Mr. Michels, and myself——

Q. How long after you returned from Detroit was it that Michels came?

A. He came on Sunday. I came the 10th of March. I remember that because the fire was that day.

Q. How long after that before Michels came?

A. The following Sunday.

Q. How long was that—two, three, or four days?

A. It could not be longer than that, I should think, or a week. We went down to the Gillis house and looked it over. Mr. Michels decided we could not use that. It was out of repair and it was not strong enough and not well adapted for work of this kind. From there we went around the city to find a place that would be suitable. We went down the East levee and we could not find water there. We went down to McGee's addition in the afternoon, and finally went to the Kaw river over in Kansas, and about Turkey creek, and we found a place there that would be suitable, that would be a suitable place to put up a warehouse. Then, on Monday afternoon, I think it was the following Monday—this was Sunday that we were walking around—on Monday afternoon we met at the Lindell hotel—Mr. Hall, Mr. Leach, Mr. Willard, Mr. Harris, Mr. Michels, and myself met there.

Q. What was the object of that meeting—what did you discuss?

A. The object of that meeting, I suppose, was to make arrangements to form this company.

118 Q. Just go on and state what it was.

A. Well, the subject was brought up. I pulled out and showed the schedule of the machinery and that contract, or that memorandum—you call it a contract—and I think it was read to them, and Mr. Leach began to get weary; he didn't like it; he didn't like the prices on the machinery as I understood it. It was determined there was nothing of it, it explained nothing; and he says, Is this all the contract; is this all we have of the description we are to have of this machinery? He says, I don't want to go any farther with it; and he inquired particularly about the engine; he wanted to know what kind of engines we proposed to put in. Mr. Michels told him a slide valve. I don't know the names. I think that was it. I think he called it a slide-valve engine. Leach says, That's not a good engine; that is not the best; and Michels remarked that he did his work better than he agreed to, always; he was noted for that, as I understood it, and Mr. Leach said some more, and I got up and said, Why, Mr. Leach, these prices have nothing to do with

this thing whatever. We are to buy this machinery ourselves as low as we can buy them; we have the privileges to buy them and this whole thing amounts to nothing.

Q. What amounted to nothing?

A. This contract.

Q. Was Mr. Michels present?

A. Yes, sir.

Q. Was Mr. Harris present?

A. Yes, sir.

Q. What was said there at that time?

A. I said, Harris, is not this so? and he said, Yes. Mr. Michels said nothing. I think I appealed to Mr. Michels, but he didn't say anything to me in reply.

Q. Was anything done that night with reference to forming a company?

119 A. Nothing. We didn't go away exactly in a row; we went off not well pleased with the thing; it looked bad.

Q. What was the objection raised as to the price of the machinery by Mr. Leach?

A. As to the cost of the machinery and we didn't know what we was going to get.

Q. It was not sufficiently defined in the contract?

A. No, sir.

Q. Did you have any further meeting with Mr. Michels?

A. We met Tuesday morning, I think, at our office in West Kansas.

Q. Who was present?

A. Mr. Hall was there, and Mr. Leach and Mr. Michels, Mr. Harris, and myself. We had a considerable talk. I said to Michels, I said, Mr. Michels you have not listed this machinery as you agreed to or as Mr. Rogers agreed; you have got the figures too high. Now, I said, here is a vacuum pan, that is too high; I can buy vacuum pans for a great deal less money than that. I was told that there was a pump belonging to that and it was not included. There was no vacuum-pan pump. Now, I said further, here is a lot of wheels—these wheels that the belts run on. You have got two prices on these wheels. No, he said, Rogers has made some mistake there.

Q. Was anything else said in reference to the contract by Mr. Michels at that time?

A. Mr. Michels then said, the only thing that I remember distinctly that he said was this, well, he says, "Who is going to pay my expenses down here?" His expense in coming to Kansas City.

Q. What answer was made?

A. I don't think there was any answer made.

Q. Was the company formed?

A. No, sir; it was not formed.

Q. What was the difficulty in the way of forming the

120 company?

A. The difficulty, I think was in the goods and in the machinery. When I had taken the goods home Mr. Leach complained

about there being so bitter. It was not like the sample Mr. Harris brought down here at all.

Q. What was the sample Mr. Harris brought?

A. It was very clear; very nice; it was a reddish color.

Q. That was before you went to Detroit?

A. Yes, sir.

Q. Did you get any information that Mr. Harris had any interest in the contract that was to be made at Detroit by these parties at this time?

A. Mr. Harris proposed to take five thousand dollars in stock in the company here.

Q. Had you any knowledge that he was to have any interest in the contract with Michels and Rogers and Stebbins?

A. No, sir; I did not. Just before I left Detroit I asked Harris what interest he had in this thing.

Q. Was that after the writing had been signed?

A. Yes sir. Said I, Harris, what interest have you got in this arrangement? He didn't reply. I then went to Rogers and says, What interest has Harris got in this thing? Well, he says, we are to pay his expenses, and if we make anything we may give him a little something.

He says, Nothing can be made out of this contract. These things are listed at cost. We cannot possibly make over two thousand or twenty-five hundred dollars.

Q. Rogers told you that?

A. Yes, sir.

Q. Was anything said between you and Michels and Rogers at the time this instrument was signed as to the price of these various items?

A. They told me they were put in at absolute cost.

121 Q. At absolute cost?

A. Yes, sir; as low as money would buy them.

Q. What further was said there about buying the machinery?

A. I told them I would not have anything to do with it. That is the first conversation. I guess I missed the first conversation. Mr. Rogers told me they wanted to put in the machinery. Said I, On what condition will you put it in? He said, We will put it in at cost; as low as it can be put in. He says, You know there are discounts on machinery. We will give you these discounts. He was to give the company the benefit of the discount.

Q. When was that conversation?

A. This was the first conversation about the cost of the machinery.

Q. What else was said about the cost of the machinery, if anything?

A. He says, Michels manufactures a few of these things there in his shop, little pulleys and some shafting, as I understand it. It was a small shop, not a very extensive one. He said Michels could manufacture a few things and we had better let him manufacture what he could. His profit was to be fifteen per cent. of the manufacturer's prices. Says Mr. Rogers, I suppose we can buy these

things cheaper, and that the company should have the benefit of that.

Q. Was anything further said about their profits in the concern?

A. Only that Mr. Michels should take fifteen per cent., and they were to take stock in this enterprise.

Q. Who was the superintendent or expert?

A. It was understood, as I have already told you, that Mr. Rogers was the expert in putting up the building, and that Mr. Stebbins was to run it. There are only three of them. They were only going to have three houses.

122 Q. What salary was Stebbins to have?

A. I think it was about seven or eight thousand dollars. It has been a long time since I have seen the paper and I don't remember, but it was a pretty large salary, and I said to Rogers, That is pretty large, isn't it? He says, Here is where our profits come in for the secret. He said this is were we are to make our money in the expert, and we are to divide it—Mr. Michels, Mr. Stebbins, and myself—that is what Mr. Rogers told me.

Q. Where was Mr. Michels during this conversation with regard to the machinery, and where it could be bought and where it was to be bought?

A. Mr. Michels was busy about his business. I saw but very little of him, in fact. I didn't suppose he was the principal man in the concern at all. It was Mr. Rogers that was represented to be king in the matter, and I was very much surprised when I saw Mr. Michel's name signed to that contract.

Q. Do you know whether he was present at the time you had this conversation with Mr. Rogers in regard to this machinery?

A. I think he was once. He was in and out. The talk was nearly all done by Mr. Rogers and myself.

Q. Where was this talk—in the shop?

A. They seemed to have a little inner office. It was there where I saw the samples were.

Q. State whether, Mr. Olmstead, if you under any circumstances would have ever signed that contract if you had supposed it to be binding upon you personally?

Objected to by plaintiff's counsel.

Q. Was there anything said there as to whether you would be bound personally by that contract?

A. I think I said a little while ago that I was not to be bound. Mr. Rogers told me in the presence of Mr. Michels and Mr. Harris when I refused to sign this contract. I says, No; I will not sign this. Mr. Rogers says, Then sign it, and if the company

123 is not formed we will not hold you responsible. I refused to sign it. I told him I could not sign such a paper as that. In fact, I didn't go to Detroit to sign anything. I went simply to investigate. I suppose I was going to see this process, as Mr. Harris told me I should.

Q. How long were you in Detroit—how long were you talking

with Rogers and Michels altogether before this contract was finally produced and signed?

A. I was there several days, but mind I never saw that contract until it was presented there when I wanted to see the goods.

Q. How much time did you spend in conversation with them in regard to this process before this contract was finally produced?

A. I had been there several days waiting around the city.

Q. How much time did you spend with Michels and Rogers at their shop talking about this matter—about the manufacture of glucose and the machinery as nearly as you can tell—about how much time did you spend there at their office?

A. Taking the hours together?

Q. Yes, sir.

A. I guess eight *o*t ten hours would cover it of the actual talk about this matter.

Q. State to the jury if you said to them when you went there in what capacity you came, whether you came to represent yourself or as representing other gentlemen here?

A. I told them that a certain number of gentlemen in Kansas City had thought of engaging in the glucose business, and that I was sent up there to investigate the process which I understood they had. It was represented that they had a process which was very valuable.

Q. Did you tell them anything about the proposed corporation?

A. I told them the money had all been pledged—that is,
124 a certain amount had been agreed upon—some thirty-five or forty thousand dollars.

Q. For what purpose?

A. For the purpose of engaging in the glucose business. Mr. Harris had gotten up this; I had nothing to do with it.

Q. What was to be the capacity of the works?

A. A thousand bushels.

Q. Thirty or forty thousand dollars had been pledged by these gentlemen, provided they liked the process after it had been exhibited?

A. Yes, sir.

Q. Did you state to those gentlemen that a corporation had been formed?

Objected to by plaintiff's counsel.

Q. Did you state to these gentlemen as to whether or not a company had been formed or whether it was in process of formation and what was to be the capital of the proposed company?

By the COURT: He is your witness, and you ought not to put a leading question of that kind. Ask him what was done.

Q. Just state what you said with reference to the company here in Kansas City—what you said to Michels and Rogers with reference to the proposed company in Kansas City.

A. I told them that a number of gentlemen here had agreed to

engage in the manufacture of glucose and Mr. Harris had the names. He had the names of a number of gentlemen who would take so much in a glucose works.

Q. How much had been raised at that time?

A. How much had been agreed upon?

Q. Yes, sir.

A. I think forty thousand dollars.

Q. Did you state that up there or did you know as to how much had been raised here?

125 A. I told them that no provision had been made for them.

Q. How much stock had been raised here in that proposed company; how much did you tell them had been raised?

A. I told them, I think, about forty thousand dollars. I only got this from Mr. Harris. I knew nothing about it myself personally.

Q. You didn't know anything about what personally?

A. About Mr. Harris mentioning how much they would put in. Mr. Harris had been engaged a long time in trying to raise a company here, and Mr. Leach and I had gone into it at a later date, and he had the names of a number of men who proposed to engage in this business.

Q. Was that stated to those gentlemen up there or not?

A. Yes, sir.

Q. And who was going in with you; who did you represent?

A. I represented this meeting that sent me up there.

Q. Who were they?

A. Mr. Leach, Mr. Chase, Mr. Willard, Mr. Winn.

Q. Did you say anything about Mr. Deardorff awhile ago?

A. Mr Deardorff was not at the meeting, but he told me he would do whatever I did in the premises. I think Mr. Harris went to see him afterwards

Q. State as to the negotiation that you had with these gentlemen up to this time about building these works, as to whether you said to them by whom the works were to be built; *whether you said to them by whom the works were to be built;* whether it was by an individual or a corporation or a company.

A. I simply tol*f* them that I was sent up there as a representative to see this stuff manufactured and to see upon what terms they would grant it.

Q. Grant what?

A. Grant the secret.

Q. State to the jury what portion of this machinery it was

126 that this company, when formed, was to have the privilege of furnishing from other sources.

A. The way I understood it was all of it. I told them positively that I knew some of the things were too high; that I should take—we should have the privilege of buying elsewhere.

Q. State if anything was said about that.

A. About what?

Q. As to whether anything was said in the meeting at the Lindell hotel, at which Mr. Hall, Mr. Michels, and Mr. Harris, Mr.

Leach, and yourself were present, — to what proportion of this machinery could be furnished by this company when formed?

A. There was considerable talk about the engine and boilers and the elevator. They in particular were talked about.

Q. In that meeting?

A. No, sir; not in that meeting.

Q. I will ask you now what was said in that meeting at the Lindell hotel, at which Mr. Harris, Mr. Michels, Mr. Hall, Mr. Leach, and yourself was present, what was said in that meeting as to what proportion of this machinery could be furnished by this company?

A. It could all be furnished by the company.

Q. Was that stated in that meeting?

A. Yes, sir; I stated this; I think I stated this at first. I intended to. I said, Mr. Leach, this contract, this schedule of prices, will have no bearing on this whatever. I said this schedule of prices has no bearing in this matter. The right is reserved to buy all of it, if we desire, elsewhere.

Q. Was Mr. Michels present?

A. He said nothing to me, in reply to that, whatever. I appealed to Mr. Harris, and he said that was so.

Q. Was anything at that meeting said by Mr. Michels in regard to any portion of this machinery being furnished by the company at that meeting or at any other meeting that you had there in Kansas City at which Michels was present?

127 A. I don't remember about that now.

Q. Do you remember of mentioning anything about boilers and engines?

A. Mr. Leach brought that up.

Q. Do you remember anything about Michels stating anything about that?

A. Mr. Michels said he done his work better than he agreed to.

Cross-examination.

By C. O. TICHENOR, Esq.:

Q. How long have you lived in Kansas City?

A. I think it is 11 or 12 years.

Q. During that time what kind of business have you been engaged in?

A. Lumber.

Q. Large or small scale?

A. Well, it is on a small scale.

Q. About what business do you do a year? What is the large-?

A. Different amounts; perhaps $100,000 a year.

Q. Are you engaged in any other enterprise?

A. I have not been until since my brother's death.

Q. Were you not interested in a retail store before?

A. Not directly.

Q. What do you mean by not directly?

A. My brother—I put in some capital for his benefit.

Q. Then you were interested in it to the extent of the capital you had in it?

A. No, sir; I did not draw any of the profits.

Q. I am not asking about profits. I ask if you were not interested in the concern to the extent of the amount of money you had in it?

A. The store owes me that money yet.

Q. Have you not been interested in mines?

128 A. A little.

Q. Considerably, have you not?

A. Well, what do you call a mine? A mine is something that produces mineral. We have not got any mineral yet.

Q. That is what you have been speculating in, have you not? You are engaged in that kind of an enterprise to a certain extent?

A. Yes, sir.

Q. You have been engaged in building in Kansas City, storerooms and that sort of thing?

A. We have some stores.

Q. Well, what I want to get at, Mr. Olmstead, is that you have seen something about business. You have had something to do as a business man in this community. That is true, is it not?

A. Well, yes, sir.

Q. When you said that chills run down your back when you *you* signed that contract it was from the fact that you knew what a contract meant?

A. I did not say that. I said after it was signed I thought I had placed myself in the power of a man to do me injury.

Q. Because you knew as a business man that a contract meant something?

A. They assured me——

Q. Why was it that you had this funny kind of feeling? Was it not because as a business man you knew that a contract meant something?

A. I knew that was not a contract.

Q. Why did you have this funny feeling that you told the jury about? Was it not owing to the fact that you as a business man when you put your name on that contract knew that it amounted to something?

A. I did not suppose that it amounted to anything.

Q. Why was it that you had these chills run down your back?

129 A. I did not say that. I spoke of the feeling that came over me. That brought out that remark. This contract was not completed. I did not want to bring such a contract as that to Kansas City—such a paper as that to Kansas City.

Q. You did not want to bring it?

A. No, sir; I wanted to have that revised and changed. It was understood that anything we did up there would be changed by this company down here.

Q. Did you want it changed, then, on Saturday?

A. I spoke about it and Mr. Michels made the answer that I told you.

Q. What did you want down there?

A. I wanted all this principal talk put in.

Q. About all of the principal talk was out *in?*

A. No, sir.

Q. You could not bind the corporation because there was no corporation existed?

A. No, sir.

Q. You had no right to represent anybody else—to sign their names?

A. I told them that. They said they would not hold me responsible.

Q. Therefore it was that — you put your name to that contract you knew what you were doing?

(No ans.)

Q. Was not that contract read over to you?

A. I read it over and refused to sign it.

Q. Was not that contract read over to you first and then did you not read it over yourself carefully?

A. I don't remember.

Q. Did not Mr. Rogers read that contract over to you and did you not then say to Mr. Rogers, Let me take that contract and read it over myself.

A. I read it over.

130 Q. Don't you think that Mr. Rogers read it first?

A. I don't believe he did.

Q. You were very careful about the matter, you say, reading this contract over?

A. Yes, sir.

Q. You knew what the contract contained, did you not?

A. When I read it over I refused to sign it.

Q. You did sign it upon the assurance that you should not be bound? You knew what that contract contained, did you not?

A. Well, I did not realize at the time.

Q. O, no; but you knew what the contract contained, did you not, when you put your name to it?

A. I had read it over.

Q. Mr. Olmstead, please answer my question, did you or did you not know what that contract contained when you put your name to it?

A. I suppose I did; I won't deny that.

Q. You knew it was a contract between you on the one part and Michels on the other?

A. No, sir; I did not know it was.

Q. Did you not say on your examination-in-chief here that you called attention to the fact that Mr. Rogers' name was not in there and Stebbins' name was not in there?

A. Yes, sir.

Q. Then you knew when you signed that contract that their names were not in there?

A. Yes, sir; I knew that.

Q. What made you say that you did not know it?

A. I mean to say that I had the assurance at the time and before it was signed and afterwards that I should not be held responsible.

Q. Did you suppose, Mr. Olmstead, that that contract had no binding force on Mr. Michels at all?

131 A. No, sir; it could not have bound him unless it did me.

Q. Did you think at that time it was binding on Michels?

A. No, sir.

Q. Then why in the world did you discuss this contract when you got home with a number of your friends?

A. I told them it was not a contract.

Q. Why then talk about the prices being too high?

A. I said the right was reserved there to buy the machinery elsewhere.

Q. Did you not say in your examination-in-chief that it was talked there at the time by some of these parties, Mr. Leach, your partner, especially, that Mr. Michels was charging too high; that he had been out to investigate the matter?

A. Mr. Leach had gone out to investigate the matter?

A. Yes, sir; that he had gone out to some machine shops around town.

A. No, sir; I did not say that.

Q. Did you not say that Leach had mentioned some items in there that he knew was too high?

A. Mr. Leach spoke about some engines. That is my impression, that he said they were too high. That is for the quality of engines. He was talking about the slide-valve engines and thought they were not first class.

Q. Were not first class? Why talk about whether they were first class if the contract did not amount to anything?

A. That was the talk when we were trying to form a company?

Q. Why discuss the question as to whether these prices were too high in this contract if it did not amount to anything?

A. Well, they were the prices they proposed to put in, and Mr. Leach did not like it.

Q. What was the reason of your having a row regarding these prices if the contract did not amount to anything? What was the cause of it?

132 A. It was because of a little controversy between Mr. Leach and Mr. Michels.

Q. What was it?

A. What was the controversy?

Q. Yes, sir.

A. He told us, If these were all the specifications we are to have for this machinery I don't want anything to do with it.

Q. If these are all the specifications we are to have for this machinery he did not want anything to do with it. What specifications did he allude to?

A. Why, simply that schedule of prices.

Q. Then, what was under discussion—was this contract and that schedule at that time?

A. These papers.

Q. Just answer yes or no. Was not this contract, with the schedule attached, under discussion?

A. No, sir. These papers were the basis on which they wanted to furnish the machinery to put up the glucose with; this was the basis on which they wanted to put them up, and Mr. Leach was arguing with him on that point.

Q. This was the basis, then; this contract was the basis?

A. No, sir; well, no.

Q. What was the basis?

A. The schedule of prices.

Q. The schedule of prices; but you say the schedule of prices was a part of the contract. Was not the schedule of prices a part of the contract?

A. I suppose it would be construed that way.

Q. What was the reason why these men backed out at that time?

—. They didn't like the prices there in that schedule.

Q. What difference did that make when you could go and purchase them elsewhere and get prices just as they pleased.

133 A. We were not together very much. Mr. Michels when he was there was spending most of his time looking after Mr. Rogers, and we didn't see him very much.

Q. Was that the reason your meeting broke up?

A. These parties would not go into it without a clear understanding, a more satisfactory arrangement than Mr. Michels made.

Q. You say it was understood there in Detroit that Michels was not to make a nickel out of this?

A. Not Michels, but Rogers.

Q. As you understood from Rogers, Michels was not to make a nickel?

A. They were not.

Q. Nobody?

A. Nobody was to make anything.

Q. That is, Mr. Michels was to go to work and build a warehouse here, put up the machinery, costing at least sixty thousand dollars; he was to furnish all of that machinery, bring it down here, guarantee that it would work, guarantee that they would produce so much glucose, and he was not to have a nickel out of that?

A. He was not to make any money out of it. They told me that where they expected to get their pay was out of the high-priced expert, Mr. Stebbins.

Q. Who was bound to pay this high-priced expert?

A. The whole company.

Q. You were not bound for anything; the company did not exist?

A. No; the company was to be formed. It was the company that was to be formed that was to pay this expert.

Q. Then, as you understand, the only way that Michels was to make anything out of this contract was not out of the machinery,

but out of the salary of the expert, and that expert was Mr. Rogers?

134 A. Oh, no; hold on. Here is something that goes in—these goods. They were to have their profit in these goods; that was where the great profit was to come in.

Q. How is that?

A. They could make so much of this stuff out of a bushel of corn.

Q. Why did you not mention that a moment ago, when this long cross-examination by your counsel took place?

(No answer.)

Q. He was to make just the same as you were to make?

A. Yes, sir.

Q. He was to pay for his stock that he was to get, and he was to put these works up for nothing and guarantee that they would work and have good results?

A. And it was stated that Rogers was to be the expert in putting up the building.

Q. Who was to be the expert in running it?

A. Rogers was to be the expert in putting up the building, and Stebbins was to be the expert in running it.

Q. At any rate, Michels was not to be the expert?

A. Michels did not know how to make the goods, as I understood it.

Q. How long did you state that you were at Detroit before you entered into this contract?

A. I think this paper was signed on Saturday.

Q. Saturday night, was it not, just before they closed their business?

A. Yes, sir.

Q. When did you get there?

A. Well, I don't remember the day I got there; I couldn't tell. I think we left here perhaps Monday night.

Q. You got there Wednesday morning, did you not?

A. We left here Monday night; yes, it was probably Wednes-

135 day morning when we got there.

Q. You were there probably Wednesday, Thursday, Friday, and all day Saturday before this contract was signed?

A. We were not talking about the contract. I didn't go there to make a contract. They wanted me to sign the paper Saturday night.

Q. But this matter in controversy was talked over all these days—during these four days?

A. Nothing about any contract.

Q. What were you talking about?

A. About the cost of the goods, the machinery, and the manufacture.

Q. What day did you figure on the cost of the goods?

A. Mr. Harris and Mr. Rogers told what they were worth.

Q. Had you figured on the cost of the machinery?

A. No, sir.

Q. Sir?

A. No, sir.

Q. Did you talk about the machinery at all?

A. We talked about the machinery, as I told you. The first thing, you know, that he said —, We will put no price on the machinery. He says, We want to——

Q. Was that the first thing that you talked about when you went there?

A. That was not the first thing. The first thing was this: Mr. Rogers wanted to know how much stock they were to have.

Q. Did you tell them that there was a certain amount of stock subscribed?

A. I told them there were a number of gentlemen had agreed to furnish a certain amount.

Q. Did you tell them, the way you did here on your examination-in-chief, that you had $40,000 pledged?

A. I think so.

136 Q. Nothing signed—no attempt to be incorporated, nothing of that kind?

A. (No ans.)

Q. Who were these parties that agreed to get up this corporation? Mr. Leach was one?

A. Yes, sir.

Q. He is your partner?

A. Yes, sir.

Q. Mr. Hall was another?

A. No, sir. Mr. Deardorff and Mr. Leach.

Q. How much was Leach to put in?

A. I think about $5,000.

Q. How much was Deardorf to put in?

A. $5,000.

Q. How much were you to put in?

A. Probably the same amount.

Q. Probably? Don't you know how much you were to put in?

A. There were different sums talked about.

Q. It was not talked about so that any of you could be bound?

A. No sir.

Q. Who were the others?

A. Harris $5,000 and Deavers $5,000.

Q. That made it all, did it?

A. There were various other parties that Mr. Harris had talked to. Now, whether these were all talked of in this $40,000 I cannot remember. These are all as near as I can remember. I think Mr. Chase, the lawyer, was to put in a little. Mr. Winn, perhaps, joined in this afterwards, after Mr. Michels went away, to put in $15,000.

Q. You say that during most of this talk that you had there at Detroit Michels was not present?

A. No, sir; he was not. He was in and out.

Q. You say that you did not know that Harris had an interest at the time you were at Detroit?

137 A. No, sir.

Q. Did not Mr. Harris tell you that he had an interest in the matter?

A. What, the contract?

Q. Yes, sir.

A. No, sir.

Q. Are you sure of that?

A. Sure of it.

Q. Have you read Mr. Harris' deposition that you have had taken in this case?

A. I don't know. At the time Mr. Harris was at the office?

Q. Did you not know at the time that you were there at Detroit that he was interested in it?

A. No, sir; I asked him the question.

Q. And he kind of evaded it?

A. He did not tell me.

Q. Did he refuse to tell *me*?

A. He did not answer the question.

Q. Did he refuse to tell you?

A. He did not tell me.

Q. What did he say when you asked the question?

A. I don't think he said anything.

Q. Did you repeat your question?

A. I did not want to press the question. I went then and asked Mr. Rogers.

Q. How did you suppose that Mr. Harris was going to get his pay? You say that he wanted to pay your expenses, how did you suppose he was going to get his expenses?

A. I don't know. Mr. Harris agreed to put in $5,000.

Q. But you agreed to put in $5,000 and yet the company offered to pay your expenses?

A. I said the gentlemen present offered to pay my expenses. I did not insist upon any payment.

138 Q. Did not they agree to do it?

A. Yes, sir.

Q. You say you wanted to see those goods manufactured, did you not?

A. Yes, sir.

Q. What did they say? They would not do it unless you did what?

A. Mr. Rogers said they had made an agreement amongst themselves that no man should go into that room without a contract being signed—some kind of paper being signed.

Q. They would not let you into that room until you had signed that contract?

A. And they said it was just simply as a matter of form to keep faith with each other, and they wanted me to sign the paper, and they pulled out that paper.

Q. To keep faith with each other?

A. Yes, sir.

Q. That is what they made you sign that contract for—to keep faith with each other?

A. Yes, sir.

Q. They seemed to think there was something sacred about signing an instrument that was not worth a cent. You say that four business men, you, Rogers, Michels, and Stebbins, got together and made a contract that you believed to be absolutely a farce. It was a farce, the signing of that contract. Now you state to this jury——

A. I say and state to this jury most emphatically that when I was assured by Mr. Rogers—when I had refused to sign that paper Mr. Rogers said, Sign it, and if the company is not raised or formed, we will not hold you responsible on it. For that moment I believed that I would not be bound.

Q. You believed, then, that that contract had no force at all, did you, in any event?

A. As far as I was individually concerned.

139 Q. It had no force—no binding force—on you in any event. Did you four men—business men—get together there and sign a contract that you believed bound nobody?

A. It did not bind anybody.

Q. There was not anything binding in it?

A. From the fact that it would not bind me, it would not bind——

Q. Your four business men got together and signed a paper which you believed amounted to nothing. That is the statement, is it?

A. I signed it with that assurance.

Q. That it amounted to nothing?

A. That I should not be held.

Q. After you signed they showed you how it was done?

A. They showed me that they could make it.

Q. You went there for that purpose—for the purpose of finding out whether they could make those goods—before you had signed it, did you not?

A. Yes, sir.

Q. You remember particularly about that?

A. About what?

Q. To see if they did make goods?

A. To see if they could really make syrup out of corn?

Q. Did you not have a key to the door in order that it should not be tampered with?

A. No, sir. I want to explain about that: There was only a lock on the door; on Monday afternoon Mr. Michels put on another lock and gave me the key; that was a matter that he was interested in himself.

Q. What was that for?

A. I don't know; it was an ordinary lock.

140 Q. Was not the object so that nobody could get in there unless you were there, too.

A. There would not have been any difficulty in getting into that room if anybody wanted to. There was a small board partition.

Q. When was it, Mr. Olmstead, that you began to think of the

defense that those goods were not good for anything; that they could not turn out good goods?

A. I guess it was about thirty days after.

Q. Did you know it on the 18th day of October, 1881?

A. The goods were in just that shape then.

Q. Why did you not tell your counsel to set that thing up in your answer?

A. I did not understand the law as well as I did afterwards. I did not show them the goods until after that.

Q. Did you tell them anything about the goods not being good? (No ans.)

Q. How did it happen that not until you got additional counsel in this case—until the last term of court, about the time of this term of court, about the time this case was ready for trial, first of May, 1882—how did it happen that it was not until then that this was set up in your answer? Had you not told your counsel before that the goods were not good? You explained this whole matter fully to your first counsel, Peak and Yeager, did you not?

A. Certainly.

Q. You did not think to exhibit them until Mr. Gage came into the case?

A. I did not think——

Q. When did you exhibit those goods? When you got additional counsel?

A. I think they were exhibited before I got additional counsel.

Q. When were those goods shown?

141 A. When were they first shown to counsel?

Q. O, no. When did you first begin to find fault with the manufacture or the result of that experiment of the manufacture of the goods by the dry process?

A. I have always kept this syrup and supposed it would be used in a trial, if there was any?

Q. When did you first tell your counsel that good goods could not be made by the dry process?

A. I never told them that.

Q. How did it happen that they got up this elaborate defense in this amended answer of Mr. Gage's which has fifteen or twenty pages? How did they happen to get that up?

A. I showed the goods; I suppose I showed the goods; I presume I did. I know——

Q. Did you ever write in any letter to Mr. Michels during the month of April or during the latter part of March, 1881, telling him that it was your understanding that he was to have simply fifteen per per cent. on the contract price?

A. No, sir; if I did I never intended to write any such thing. It was fifteen per cent. on the part he was to manufacture.

Q. You stated a moment ago that you were not bound?

A. I was trying to form a company—trying to form this company.

Q. But you were not — obliged to pay this fifteen per cent. on Michels' manufacture than those goods that he purchased?

A. No; Mr. Rogers said that Michels had a machine shop there and he could manufacture some of the goods.

Q. Did you not state in your examination-in-chief that Michels was not to charge any profits on those he made?

A. For his fifteen per cent. mentioned. He mentioned the cost he would buy them for. We had the privilege.

Q. He was not to make fifteen per cent. only in that event?

142 A. I suppose that Mr. Michels, being in the business, could manufacture machinery as low as anybody else (could not hear the balance of answer).

TUESDAY *October* 31*st*, 1882.

OLMSTEAD recalled for further cross-examination.

By C. O. TICHENOR:

Q. When did you say, Mr. Olmstead, that you found out that this attempted organization fell through?

A. When it was? When I could not raise the company.

Q. When was that?

A. There was a good deal of talk about it all along for several months after the first—after I came back from Detroit.

By the COURT: You say when you could not raise the company?

A. No; I did not understand that I was obliged to raise the company.

By the COURT: Did you say, "When I could not raise the company"?

A. I may have said that. I did make an effort to raise the company.

Q. When was it finally determined that this company could not be raised?

A. Perhaps when I gave it up; say, when Mr. Winn told me he would not go into it.

Q. Does that answer my question, Mr. Olmstead?

A. At what date?

Q. Yes, sir.

A. I suppose it was, perhaps, about the time that Mr. Stebbins was down here.

Q. When was that? The jury don't know what time Mr. Stebbins was here.

A. It may have been in July.

Q. It may have been in July?

143 A. Yes, sir.

Q. It may have been in August?

A. I don't think it was as late as August.

Q. It was either in June or July that you found out that this corporation could not be organized. You are willing to say that?

A. Probably that.

Q. That is your best judgment—your best recollection?

A. Yes, sir.

Q. You say that Michels was to make nothing out of the con-

tract. Can it be possible that you have written him a letter saying that you thought $15,000 was all he ought to make out of that contract?

A. That was as a compromise.

Q. When was it that you undertook to compromise this thing?

A. I thought we could raise the company at this price, $15,000. I consulted with Mr. Winn about it.

Q. You say there was nothing to compromise?

A. The idea was this, if he would reduce the prices we could get up the company.

Q. You were willing, then, that he should make $15,000 out of it?

A. Well, personally, I was.

Q. So you were willing to compromise this contract, which was binding on nobody, so as to let Mr. Michels make $15,000, were you?

A. How?

Q. You were willing to compromise this contract that was binding on nobody and it was understood to have no force or effect in any event; you were willing to compromise, so that Mr. Michels could go on and make $15,000 out of it?

A. I was willing he should have $15,000 if he could put up the works—construct the Glucose works—that was myself, personally.

144 Q. Now, listen to this (reading from letter): "I think the best way to get at this now will be for us all to have the works built at the lowest rates that we can get them, and then after they prove a success, as per our understanding." What do you mean by our understanding? Does that refer to this contract that you made at Detroit?

A. No, sir.

Q. What did you mean, then—that they were to make the goods successfully? That was the contract, that was the guarantee. You had Michels' guarantee that these goods should be successfully made.

A. That is what I meant in the contract.

Q. "Add so much to the cost as will give you, say, $15,000 for your margin. I find the prices so exorbitantly high on many things that nobody could ever be satisfied. This will be a better lay out for you than our first talk." You wrote that, did you not?

A. Yes, sir.

Q. You meant it, did you not? This was written on the 23rd day of March, 1881.

A. Yes, sir.

Q. And you thought, then, that $15,000 for a margin would be a better lay out than this contract which you and he entered into there at Detroit, did you not?

A. You understand that we did not enter into a contract, he and I.

Q. That is for the court to say.

A. The court may declare the law.

Q. What did you mean by that? You thought it was a better lay out for him to make $15,000 to go on and build the works, find out what they actually cost, then to get $15,000 profits margin. What do you mean by our first talk?

A. It would be certain.

Q. You thought $15,000 would be better for him because it would be certain?

145 A. Yes, sir.

Q. Under this contract that you made, this piece of paper that you signed, it was an uncertain thing?

A. It was an uncertain thing about his making anything. I don't know whether that is—I consulted with Mr. Winn and other prominent men on the subject—the Kansas City parties—with regard to the matter, and he thought it would be a good suggestion to make.

Q. What would be a good suggestion to make?

A. To give him $15,000 profit. This was only done upon the solicitation of Mr. Winn.

Q. Were you ever in a position so that you could go on and build these works yourself?

A. No, sir. Personally?

Q. Yes, sir.

A. No, sir.

Q. No matter what they cost?

A. I never intended to build the works, personally, myself.

Q. And there never was a corporation formed so that a corporation could build it?

A. How?

Q. There never was a corporation formed so that a corporation could build it?

A. I don't know of any corporation being formed.

Q. So that if there was any talk about anybody building it it must have been yourself?

A. No, sir. I did not talk about——

Q. On the 11th day of May, 1882, did you not write to Mr. Michels a little letter to go ahead "as I agreed with Rogers as to the cost of the machinery, but on no other basis"?

A. I was speaking for the company.

Q. Did you say anything about the company?

A. That was understood.

146 Q. You say "I," don't you? Don't you say plainly to Mr. Michels that you are willing to go on and build it?

A. I did not mean myself; it was understood there was never any talk about myself, personally.

Q. You wrote that letter, didn't you?

A. Yes, sir.

Q. In this contract that is filed with your answer I see that where you agreed to give the expert it was originally written $8,000?

A. No; I didn't agree to give anything.

Q. The whole thing was a farce, I know.

A. At that time.

Q. How did it happen that the word "eight" was scratched out and "seven" written in?

A. I told Mr. Rogers that I thought eight thousand was too much.

Q. That was reduced one thousand at your suggestion?

A. Yes, sir.

Q. Why in the world did you want to reduce it one thousand dollars when it was not binding on you at all? Why were you so solicitous about that?

A. This was to be submitted to the people of Kansas City. I had but little time to look over it and to investigate it, and I just happened to see that and suggested that that be put down $1,000 less.

Q. It was finally agreed that it should be $7,000?

A. Yes, sir.

Q. And it was at your suggestion that it was lowered $1,000?

A. Yes, sir; I wanted to make it look as respectable as I could.

Q. So it was a question of respectability, reducing it $1,000?

A. I did not want to have it look any more foolish than I

147 could help.

Q. I see there is another interlineation in this contract. This expert the way the contract seems to have been written originally was for five years, and that was scratched out—the five years—and there is inserted in its place "until such time as the company should want the services of the expert"?

A. Yes, sir.

Q. At whose suggestion was that made?

A. At my own.

Q. At whose?

A. At my own.

Q. Have you got that syrup here?

A. Yes, sir (producing syrup).

Q. You are certain that this corn meal in the bottom—you have sworn to it two or three times—you are certain that this is corn meal, that sediment?

A. I did not say it was corn meal.

Q. Did you not say that you thought it was corn meal?

A. I did not.

Q. You did not state that that was corn meal?

A. No, sir.

Q. What did you say about corn meal in connection with that syrup?

A. I said my wife said it was. She called my attention to it, and she said this is going back to corn meal. If I said it and you understood it so I never intended it. I did not mean it. I did not say it.

Q. What is your idea about that, is it not sugar?

A. I don't know what it is.

Q. Don't you think that this deposit is sugar?

A. I don't think it is corn meal, myself.

148 Q. You do think it is sugar, don't you?

A. It is not sweet.

Q. Is it not your judgment that that deposit is sugar? It is not anything unusual to see a deposit of sugar in molasses. You see that in New Orleans molasses.

A. I understand it is not unusual.

Q. Is it anything unusual for New Orleans molasses to have a deposit of sugar in it?

A. No, sir.

Redirect examination.

By Mr. PEAK: May it please the court, in the examination of this witness I forgot to ask him with reference to one matter that I desire to call his attention this morning.

By the COURT: What is it?

Mr. PEAK: It is in regard to what representations, if any, were made to him as to the advantages or disadvantages of this dry process over the wet process.

By the COURT: You can go on.

A. It was represented that this could be made in twenty-four hours from the meal, the meal to be converted into syrup in twenty-four hours—not longer than that—whereas in the starch process it would take some seventy-two hours or more. The cost of the works was much less in this than in the starch process and the product was a great deal more; and I think it was represented to me by Mr. Rodgers that Hamlin's product, that the starch process was about twenty-eight pounds to the bushel of fifty-six pounds of corn, while in this he could get thirty-five pounds at least; that he could get thirty-five pounds sure; but he was willing to guarantee thirty-two pounds.

Q. When were these representations made to you, Mr. Olmstead?

A. They were made to me in Detroit.

149 Q. Where else?

A. They were made to me by Mr. Harris before he went to Detroit.

Q. This letter, Mr. Olmstead, which Mr. Tichenor showed you, I will get you to state if that speaks of the agreement with Rogers. What agreement had been made with Rogers that was referred to in that letter?

A. As to the cost of the machinery. This was our principal talk, that the machinery should be put in at cost.

Q. What effect was that proposition having upon the formation of a company here?

A. The company refused to come in. These gentleman refused to come in and pay the prices that the machinery was scheduled for in that contract, in that schedule that accompanies that paper.

Q. Did you receive this letter (showing witness letter)?

A. I did.

Q. From whom was that?

A. It is from Jacob Michels.

Q. You carried on correspondence with him at this time?

A. Yes, sir; we had been writing considerably.

Q. What date was it that Mr. Michels left here? Do you remember?

A. In March.

Q. What time in March?

A. I think it was perhaps about the 15th of March. Perhaps from the 15th to the 17th. I cannot tell.

(Letter introduced in evidence.)

Q. This is the letter that Mr. Tichenor showed you? Read that sentence down below.

Q. What did you ask?

Q. Is that the letter that Mr. Tichenor showed you and asked you about a moment ago? Read this last sentence. Was not
150 this what you wrote in the letter (showing witness portion of the letter)?

A. "This will be a better lay-out than our first talk of cost and manufacturer's profit, and would be fair for all."

By GAGE: What company and persons was it that you referred to when you spoke of it would be better for all; to whom did you refer?

A. I referred to these gentlemen who were talking about going into this enterprise.

Q. By whom is that postscript written in that letter?

A. Mr. Winn.

Q. It was on that letter, sent at the time the letter was sent?

A. Yes, sir.

Q. "We feel that this proposition, even if it costs us exactly the same as your figures, would be more satisfactory to the company, and we want all satisfied, so as to work harmoniously and to success." Is that the postscript that is written there?

A. Yes, sir; that is the one written by Mr. Winn.

By Mr. PEAK: We wish to offer this letter from Mr. Michels to Mr. Olmstead. He identified it as the letter he received from Mr. Michels (reads letter to the jury); letter dated March 20th.

Recross-examination.

By C. O. TICHENOR, Esq.:

Q. One object of your visit there at Detroit in witnessing this experiment was to see how much or how many pounds of syrup could be manufactured from a bushel of meal, was it not?

A. Well, to see whether——

Q. Just answer my question yes or no.

A. I don't know whether it was specially that or not.

Q. Was that one of the objects?

A. The object was to see if they could make it.

151 Q. Was it one of the objects to see how much syrup, how many pounds, could be made from a bushel of meal?

A. Whether that was the moving power that sent me——

Q. I am not talking about moving power. I am asking you a plain and simple question, whether it was one of the objects.

A. Probably it was.

Q. It was one of your objects in witnessing that experiment to see how long it would take to render this meal into syrup?

A. Yes, sir.

Q. How long did it take?

A. I think they got—I think they got the syrup out—I think they commenced Monday morning and Monday night, I think, they had some of the syrup.

Q. They did it in about how many hours?

A. That would be about twelve hours.

Q. How many pounds of syrup did they get out of that bushel of meal?

A. As near as I can remember now—I don't remember the exact number, but according to my recollection—when I left there they had about twenty-four pounds.

Q. And still some that was not drawn off?

A. They said there was some; they said so. There was a little water there that had not much sweetening.

Q. You say here on your last examination that the company was not willing to go into this at the schedule of prices. That is the statement you made to Mr. Peak, is it not?

A. That was one difficulty. Of course, there was other——

Q. But I say you stated to Mr. Peak the reason why you wrote this letter that I have called your attention to, March 23rd, 1881, offering this $15,000—the reason why the company was not willing to go into it was on account of that schedule of prices.

152 A. Yes, sir; that was one of the reasons.

Q. How could the company be unwilling to go into it when it did not exist?

A. As I understood it this was the proposition of Mr. Michels to the people of Kansas City.

Q. The people generally, the entire population of Kansas City?

A. No, sir; the people in Kansas City who were interested in this matter; it was a proposition he made to them.

Q. A sort of open letter to the people of Kansas City?

A. It was directed to these gentlemen who were talking about glucose. It was a sort of a basis if they were willing to engage in the enterprise.

Q. They were willing, then, these assembled people or inhabitants of this city, whatever you said?

A. I did not say that. Don't put any words in my mouth that I did not use.

Q. You say they were not able to accept the schedule of prices, but were willing to allow him $15,000?

A. No; I did not consult any one of the company, only Mr. Winn.

Q. So far as this $15,000 was concerned that was solely on your own responsibility?

A. And Mr. Winn, he said——

Q. You and Mr. Winn?

A. No; he said that—of course our talk was this: I said I cannot raise this; I cannot form this company for they will not accept a proposition of that kind.

Q. Had these other inhabitants or people or whatever you may term them, had they agreed aside from yourself and Mr. Winn. Did they know of your making that proposition of $15,000 for profits?

A. I consulted Mr. Winn about it.

Q. You did not consult the rest of them?

A. Not after that.

153 BRADNER L. HARRIS, being sworn, in direct examination by JOHN L. PECK, Esq'r, testified:

Q. Where do you live?

A. In Kansas City.

Q. Where did you live in February and March, 1881.

A. I was in Kansas City.

Q. In what business were you engaged in at that time?

A. I was interested in putting up glucose works.

Q. In what way were you interested in the glucose business?

A. I came here first in the interests of the Rochester Glucose Company.

Q. For what purpose?

A. To help erect the works.

Q. For the manufacture of what?

A. Glucose.

Q. By what process?

A. I came here. It was not determined when I came here first what process they would put in; we talked of the dry process when I came here, but it was not determined.

Q. When was it you came here?

A. I came here the 29th of December.

Q. That would have been 1880?

A. Yes, sir.

Q. Are you acquainted with Jacob Michaels, the plaintiff in this case?

A. Yes, sir.

Q. Are you acquainted with Mr. Rogers?

A. Yes, sir.

Q. Did you ever have any conversation with Mr. Olmstead, Mr. Hale, and others in reference to the formation of a glucose company here?

A. I had a conversation with Mr. Olmstead.

Q. When was that? About what time?

154 A. About the first of March—no; about the first of February—that I first approached Mr. Olmstead.

Q. February of what year?

A. Of 1881.

Q. Now, what company were you representing at that time?

A. I then had concluded to draw out of the Rochester Company and organize a new company here.

Q. Who were you associated with in that new company that you were to raise here. At whose instance were you raising it?

A. At my own or Mr. Deavers.

Q. Prior to that time did you ever confer with Mr. Michaels or Mr. Rogers in reference to the formation of a company here?

A. I did.

Q. Where was that conference?

A. At Detroit.

Q. What were the terms upon which you were to raise the company for them, if any?

A. I was to have a certain percentage of the profits arising from the contract if I got this dry process adopted by the company here.

Q. What percentage were you to have of the profits of the contract?

A. When we first talked the per cent. was not named when I came here first.

Q. The percentage was not named?

A. No, sir.

Q. State to the jury what was the understanding as to the percentage.

A. When I went down with Mr. Olmstead, after it was fully arranged, I talked over that we were to try and organize this company. We first started on the basis of 1,000-bushel house. They persuaded me to advise Mr. Olmstead and the company if we could raise one to put in a 2,000-bushel house; that it would take
155 a proportionately less amount to build that.

Q. That arrangement was made after you and Mr. Olmstead went on there?

A. Yes, sir.

Q. What arrangement did you have prior to that time?

A. I was to have a certain percentage.

Q. Of what?

A. Of the profits that we derived from the machinery and from the putting up of the works.

Q. Just state what you did here under the contract in Kansas City.

A. When I first went down to Mr. Olmstead I went down to find Mr. Leach and Mr. Deavers, the men that had the option on the Gillis house; he could not raise the company. After I concluded to throw up the Rochester Company he wanted I should go in with him and put up a thousand-bushel house in the Gillis house. I went to see Mr. Leach and Mr. Leach was not there. I introduced myself to Mr. Olmstead and also Mr. Deavers to Mr. Olmstead. I told him what we wanted.

Q. What did you tell him?

A. I told him we were trying to raise a company to put in a thousand-bushel works down in this house, and that it was very profitable, and we believed we should have no trouble to raise a company.

Q. Did you state to Mr. Olmstead with reference to the manufacture of this product and its advantages or disadvantages over the wet process?

A. I did not; I told him that it had been represented to me as good, and I supposed it was all straight. I told him this dry process was far preferable to the wet process; they could produce more goods at less expense, and the machinery would be less expensive, and it would take less working capital to run it; that it could be converted every twenty-four hours into the product.

156 Q. State whether or not you saw any products or sample.

A. I did.

Q. Where did you get those samples?

A. At Mr. Michaels.

Q. In Detroit?

A. Yes, sir.

Q. State what you did with them?

A. I exhibited them. I had three samples of syrup and glucose. It was all syrup. I had no glucose proper that I exhibited to these gentlemen to show them what could be made from this dry process.

Q. To whom did you exhibit them?

A. To Mr. Olmstead, Mr. Leach, Mr. Winn, and Mr. Willard.

Q. What were those samples represented to be samples of?

A. Of the product of the dry process.

Q. State what was done, Mr. Harris, after exhibiting these samples to Mr. Olmstead and these other gentlemen.

A. Mr. Olmstead says to me, "You go over to Mr. Deardorff's. Mr. Deardorf is a monied man, and if you can show him as you have shown us he will put some money in." I went over to Mr. Deardorf's and had a long talk with him, and I met him the next day. I went over the next afternoon and explained distinctly the business; showed him these samples, and he says, "I will see Mr. Olmstead, and if it is all right and satisfactory I will put some money in this." In the meantime he went down to this Gillis property with me that same afternoon to look it over, and I says to him, "Suppose I call a meeting of these gentlemen that propose to put money into this and let us get together and talk it over." "Very well," he says. I notified Mr. Olmstead, Mr. Leach, Mr. Willard, Mr. Chase, and Mr. Deardorf. Mr. Deavers was there the first night, I think, and we talked this matter over.

Q. Where was the first meeting held?

157 A. At the Lindell hotel parlors.

Q. At what time.

A. Well, it must have been somewhere not far from the first to the tenth of February.

Q. State what was done at the meeting.

A. I exhibited these samples and told them of the profits in the business and of the necessity of works West; of the profits that could be derived from the Western works over the Eastern works; that we were right at the home of the product that makes these goods, and cited them to Hamlins that got rich out of it, and at the first meeting they concluded to call another meeting. At the

adjourned meeting they wanted to organize a company. I think we had an adjourned meeting the second night afterwards. I was going to organize a company and Mr. Leach, Mr. Olmstead, and Mr. Willard. Mr. Leach says, "We would like to know a little more about this;" says he, "Mr. Deavers has been in the glucose business and he did not make a success of it in his Leavenworth deal, and we do not know for certain whether they could make these goods or not." We talked about making them there by this plan and another at that meeting, and these gentlemen suggested that somebody should go to Detroit with me.

Q. Just right there. Why did they suggest that some one go to Detroit? What had been said by you with reference to Detroit parties?

A. I had told them that Mr. Michels had the sale of the process. It was reported to me that they were the sole manufacturers of these goods—that is, they had this dry process better than anybody else, and I says to Mr. Olmstead or to these gentlemen, If you will send a representative down with me, if it is not as represented, I will pay the expenses. It was suggested that Mr. Olmstead
158 should go down. Then the gentlemen says, "We will pay Mr. Olmstead's expenses to go down to Detroit with you and see these goods made." So I think we started from here on Monday night, Monday or Tuesday, and went to Detroit. After we got there Mr. Deavers, Mr. Olmstead, and I went over to Mr. Michaels', and I introduced Mr. Deavers and Mr. Olmstead and told them what we came for.

Q. What did you tell them?

A. I told them I had represented to these men what they could do. "Now," says I, "if you can show them and everything is satisfactory I can raise a company to put up the works in Kansas City before the Rochester people get the start." When I first came, you understand, when I first came I tried to get it started for the Rochester people. Well, Mr. Rogers in a little while says to me, "We won't have anything to do with these goods. We won't allow Mr. Deavers to have anything to do with this deal." Why, of course, that stopped it for a little while. I told Mr. Olmstead of it. Mr. Deavers felt terrible hurt that he could not be counted in with us. He was not admitted to take anything in the business at all. I told Mr. Michaels we could organize a company for a thousand-bushel house; that I had already pledged to me, if everything was all right, about $40,000. "Well," he says right off, "You had better make it a two-thousand-bushel house." I says, "Mr. Olmstead has not come here with any instructions to talk of a two-thousand-bushel-house, he came here to see the goods made, and if it was satisfactory to make arrangements for the machinery for a one-thousand-bushel-house if they could raise the company. We talked three days, perhaps, before we came to any conclusion. Finally, on Saturday afternoon, Mr. Olmstead and I, of course, at our hotel talked it over. I presumed these men probably would put in a little more money, and then if they did not we could probably raise a company outside

of these men enough to make a two-thousand-bushel house,
159 if everything was all satisfactory. On Saturday afternoon, just about dusk, we went down to the works again to Mr. Michaels' shop and went into the office, and Mr. Olmstead says to the gentlemen, "We have been here a good while and I would like to see you make these goods and se- whether you can make these goods." Mr. Rogers spoke up and says, "We never allow anybody—we have made a promise among ourselves, there are so many men here to look at the glucose works and want to see these goods made—we have made a promise amongst ourselves not to allow anybody in there to see these goods made unless they sign an agreement to go on and put up works if satisfactory," and at that produced this writing, and Mr. Olmstead started to look it over, and Mr. Rogers says, Let me read it for you, so he read it over. Mr. Olmstead says, "I cannot sign anything of that kind. I have no authority to sign it." "Well," Mr. Rogers says, "Michaels can sign it for us and you can sign it for the Kansas City people," and Mr. Olmstead says, "It is a terrible large thing," and says, "I cannot take any responsibility of this kind." Mr. Rogers says then, "If you want to see these goods made sign that paper and we will show them to you." Mr. Olmstead still said, "It is an enormous thing and I cannot sign it." Rogers says, "You sign it and if you cannot form a company we will not hold you personally responsible on this contract." Mr. Olmstead says, "If I am not to be held personally responsible I will sign it." The contract was signed. After it was signed Mr. Michaels says, "You men can go to your hotel and draw up a contract as you would like it for the company and Mr. Rogers and I will draw up one, a more elaborate one; this was a hurried affair. So it was completed right. Mr. Olmstead and I went to our hotels. Of course we could not draw up any contract for the company because we had not talked with the company about putting any two-thousand-bushel house. So on Sunday
160 I drove out some 18 miles and I did not see anything more of Mr. Olmstead, and Monday morning I went down to the works and Mr. Michaels had an experimental works. They proposed to take 100 pounds of meal that day and commence this operation. Mr. Olmstead in his evidence said they got it out on Monday, but they did not get it out until Tuesday night about four o'clock, I should think. We then went over across the road and got five or six of these bottles. I brought home two bottles and I think Mr. Olmstead brought home three. Then I had one or two little samples, and we took that night the train home. There was nothing more that we could do after they made these goods; after this experiment was made. We went to our hotel and Mr. Michaels came down that night, if I remember right, Mr. Michaels came and Mr. Stebbins. I think they came down that night before we took the train. We took the 9.50 train for Chicago.

Q. Who was present when that contract was signed or written?

A. Mr. Michaels, Mr. Rogers, Mr. Olmstead, and myself.

Q. After you returned to Kansas City state if Michaels came to Kansas City.

A. Yes, sir; let me go back a little. Before we came away it was arranged that Mr. Michaels and Mr. Rogers should go up to Kansas City the forepart of the week.

Q. For what purpose?

A. To help perfect the arrangements of this company and to make arrangements and to look over this building to see if it would answer, and, if not, so that we could go and put up a new building if we could get started.

Q. State to the jury whether in compliance with that he came to Kansas City.

A. On the following Saturday night. I think we got home on Thursday morning——

Q. Just one more question. In regard to the talk there at Detroit; in the talk which you had when at Detroit was any-
161 thing said about Rogers or Michaels being interested in this concern?

A. Yes, sir; it was understood that they were to have, if I remember right, to take $10,000 or $20,000. I do not remember which, $10,000 or $20,000 of the stock.

Q. What interest was each to have in the products of the contract; in the profits of the contract?

A. At that time I did not understand how they were to divide. They were to give me 15 per cent. of the profits of the contract.

Q. If you succeeded?

Q. I think Mr. Rogers and Mr. Stebbins, both of them, told me what interest they were to have.

Q. What interest was it?

A. I think Mr. Stebbins was to have 18 per cent. and Mr. Rogers 33 per cent.

Q. What was Mr. Michaels to have?

A. Mr. Michaels would have the balance of it, 34 per cent.

Q. And you say it was understood between you and Mr. Olmstead and Mr. Michaels and Mr. Rogers that Mr. Michaels and Mr. Rogers were to go down to help perfect the thing?

A. Yes, sir; on Saturday night Mr. Olmstead came over to my house, on Wyandotte street, and says, "I have telegraphed Mr. Michaels that I would meet him at the train the coming morning," and he says, "Will you come over?" I says, "Yes." On Sunday morning I went over. We walked down to the train and met Mr. Michaels and when we saw Mr. Michaels get off we asked for Rogers. He said he had not come. He said, "He is away, but I expected to meet him here."

Q. Who was to be the expert in the building of these works, in running them?

A. Mr. Rogers. Rogers was represented to us, also beforehand to me, to be an expert in this business.

Q. By that what do you mean?

162 A. By that, the expert in putting in the machinery, manipulating and making the goods, and everything of that kind. He and Mr. Michaels both represented to me—I don't know that Mr. Stebbins ever told me up to that time, although I talked to Mr.

Stebbins about this process. He wrote a letter to me while I was in Buffalo—while I was there putting in some machinery *in*. There was there I first heard of the dry process of Mr. Williams, who built the Buffalo works. He talked to me about the dry-process works; in fact, he told me they were to start one in Marshaltown.

Q. This contract introduced in evidence here and signed by Michaels and Olmstead, what interest did Michaels represent? Who were the parties interested upon the same side with Michaels?

A. He signed the contract, I supposed, I understood for himself, Rogers, and Stebbins.

Q. And who else was interested in that sale; yourself?

A. I was interested with them.

Q. Mr. Michaels came to Kansas City in compliance with the request that you made. You say Mr. Rogers did not come with him?

A. No, sir.

Q. State what Mr. Michaels did when he came here.

A. Says I, "Mr. Michaels, where is Mr. Rogers?" and he said, "I expected to see him here." I says, "I think he has gone off with the Rochester people." I says, "I think it is so." He says, "I think he will be here tomorrow." That would be Tuesday. Mr. Michaels says, "I will go and telegraph him." He went and telegraphed. I think he telegraphed two or three times that day, and Mr. Rogers did not give any particularly satisfactory reply that he would come or s-ould be here.

Q. Did he come?

A. No, sir; not at that time.

Q. Now, go on and say what Mr. Michaels said about Mr. Rogers coming.

163 A. He says, "I do not know what we are going to do," he says, "if Rogers has backed out from this and gone with the Rochester people." "Well," says I, "can't you go on without him?" He says, "I do not know whether I can or not." "But," he says, "I shall not give it up yet that Rogers has left us." After his last telegram from him he says, "I think Rogers will be here by Wednesday night," and this was Monday afternoon, next day. At any rate, it was before we had called this meeting on Monday at the Lindell hotel. At any rate I called this meeting and we had it, and Mr. Rogers did not come. He did not put in any appearance at all.

Q. What was done at that meeting? Who was there first?

A. Mr. Leach, Mr. Willard, Mr. Chase, M. Wynn, Mr. Hopkins, and Mr. Hall. I never had any talk with Hr. Hall previous to this. I had talked with Mr. Leach and Mr. Olmstead.

Q. Was Mr. Olmstead present at this meeting?

A. Yes, sir.

Q. Where was Mr. Michaels?

A. He was there.

Q. What was discussed?

A. The first thing that was discussed Mr. Olmstead produced some of these goods. While they were talking about it Mr. Leach, it seems to me, had seen this schedule of prices. He said right out,

he said, "I supposed that the machinery was to be put in at cost." Mr. Olmstead says, "That is my understanding." He says, "Here are things here put down more than twice what they are scheduled at." That first created a feeling about the business that these people were making too much.

Q. When Mr. Leach called their attention he supposed the things were to be put in at cost. Did Mr. Olmstead say that was true?

A. Yes, sir; he could buy the goods wherever he wanted to.

164 Q. Was Mr. Michaels where he could hear that remark of Mr. Olmstead's?

A. I don't know as to that. We were all around the table. I presume he was.

Q. Did you hear it?

A. Yes, sir.

Q. Did you make any statement at the same time?

A. Well, I don't remember just—I remember saying that the understanding was that Mr. Olmstead—what machinery he wanted to buy he had the privilege of buying if he could buy it lower than they could furnish it.

Q. Just state to the jury what part Mr. Michaels took in that meeting. What did he do?

A. There was nothing particular done at the meeting. As soon as the people got to discussiug this we talked of this machinery business so long there was nothing much else done, and they concluded to wait another day to see if Mr. Rogers would come. All was anxious to have Rogers here.

Q. Was this paper that has been introduced in evidence, the contract between Michaels and Rogers, shown at that meeting or explained.

A. I cannot say as to that, Mr. Peak, whether the whole contract was shown or talked over or whether just the schedule of prices.

Q. State to the jury whether there was any conversation at that meeting between Mr. Leach and Mr. Olmstead as to the force of this writing that Mr. Michaels and Mr. Olmstead had signed.

(Obj.)

A. Yes, sir.

Q. Was Mr. Michaels present?

A. Yes, sir; at the meeting at the Lindell hotel on Monday.

By the COURT:

Q. What was it about buying the machinery elsewhere?

165 A. We were not obliged to buy of them if we could get it cheaper. We had the privilege of buying the machinery ourselves.

By Mr. PEAK:

Q. What was said at that time by anybody else?

A. I don't remember particularly, Mr. Peak. I know that this part of it was discussed so long that it got to be late, and Mr. Leach says I don't want anything to do with it. If we are to put up the

works mutually and have it put up for the mutual benefit I don't want one party to make $25,000 or $30,000 or $40,000 out of a thing of this kind and I won't go into it.

Q. Did you have any other meeting of the parties while Mr. Michels was here?

A. Not any other called meeting; no, sir.

Q. Was there a meeting at Mr. Olmstead's office?

A. Yes, sir; we went down the next morning.

Q. Who went down?

A. Mr. Michaels and, I think, Mr. Wynn, and Mr. Willard came down while we were talking.

Q. What was the subject of conversation there?

A. About the same thing. They talked over the prices of this machinery of these people.

Q. Did you have any conversation with Michaels in regard to this writing between him and Mr. Olmstead at that time, there at the office?

A. Yes, sir; I told Michaels then that we ought to get it arranged before he went away; that this was of no account; we could not get along in this way. Mr. Michaels says, "Then I will go home right off." I told him I could not do anything. I could not go on and consummate this contract at all, and we would have to let it drop.

Q. Was there anything said at that time between you and Mr. Michaels as to this writing between him and Olmstead as to its validity or effect?

166 A. Well, that is just the remark I made, "We would have to drop it." There was nothing that was binding; it did not amount to anything.

Q. Did Mr. Michaels make any response to that?

A. Not at that time. I told him before he went away, perhaps, if Rogers came and we could all get together we could make some arrangement. Then I told him I thought if this could be arranged as it wastalked between us—I thought we could make this arrangement yet, although Mr. Deardorf had died and that was going to make some difference with Mr. Leach and Mr. Olmstead.

Q. Did you have any conversation with Mr. Michaels? Did you have a talk with him down at the office after that?

A. Oh, yes; we were together at different times through the day. He went away, I think, either that night or the next night; I don't remember which now.

Q. State what, if anything, Mr. Micheals said as to the responsibility of Mr. Olmstead on this writing.

A. Why, it was understood by him if we did not raise the company that the responsibility did not rest on anybody.

Q. What did Mr. Micheals say about it?

A. He understood it so. We talked in the meantime about a thousand-bushel house. If we did not go on with this we could go on and put up a thousand-bushel house.

Q. Was the company formed?

A. No, sir. I figured a long while; I think four weeks or more

after Mr. Michaels was here in trying to perfect arrangements. I tried to get these people to go in and put money in. Mr. Wynn called for several days, I think; I don't know but that it was about four weeks afterwards he was down at the office of Mr. Olmstead one day and he and I went over to Ridenour, Baker & Co.'s and took some of the syrup with us. Mr. Ridenour said so much about it that Mr. Wynn began to think it was not as good an investment as *it* thought it was and he concluded to withdraw from it
167 entirely.

Q. Mr. Harris, after you had this conversation at Mr. Olmstead's office with Mr. Michaels, Mr. Wynn, Mr. Willard, and these parties, did you have a private conversation with Mr. Michaels afterwards in regard to this contract and in regard to Olmstead?

A. Yes, sir; that same day.

Q. Just state what that conversation was.

A. I said to him right off, "We cannot go on with this." "If we cannot form the company," he says, "we can fall back and take a thousand-bushel house." I says, "You cannot without Rogers." He says, "Rogers will be here; if he don't I shall go and see him."

Q. You spoke about having some samples when you came here for the purpose of trying to raise the company. By whom were they furnished?

A. By Mr. Rogers and Mr. Michaels.

Q. Have you learned since with reference to those samples where they came from?

A. Well, yes, sir. I learned that they did not make them.

Q. Who informed you that they did not make them?

A. Mr. Rogers.

Q. Did he tell you where they got the samples that they gave you?

A. He did not tell me where they were all made. I says to him, "You have got some glucose syrup in the goods." The goods they represented to me I will state now were goods they never made.

Q. Who told you they were goods they did not make?

A. Mr. Rogers told me. A part of these goods that I brought here were glucose goods mixed with glucose, and glucose goods are wet, of course.

Q. Did he tell you where they were made?

A. I understood him that they were mixed with glucose goods from Hamlin's goods.

168 Q. What is Mr. Hamlin's process, a dry or wet process?

A. A wet process.

Q. At the time you brought the goods here did you suppose they were the goods made by the dry process?

(Obj.)

Q. At the time you brought these goods here how were they represented to you to be made?

A. They were represented by Mr. Rogers to be made by the dry process.

Q. How did you represent them to the parties here?

A. I represented them in the same way.
Q. Did you state that you took some samples when these goods were made at Detroit?
A. I did.
Q. What became of them?
A. When we broke up and gave up our rooms on Wyandotte St. my wife threw them out.
Q. State to the jury how did that syrup compare in appearance with this.
A. At that time there was not as much sediment. It turned a brown color. There was not as much sediment in the bottles of mine. There was a little sediment.
Q. Have you tasted of that product—that stuff?
A. Not lately. I have tasted that; yes, sir.
Q. State to the jury if you are a judge of articles of that kind.
A. I am of the taste of it; yes, sir.
Q. Is it a merchantable product?
A. No, sir.
Q. What is the taste of it?
A. Well, there is a bitter taste to it; an oily, bitter taste.
169 Q. Are you acquainted with Mr. Michaels' handwriting?
A. I am.
Q. Have you had a correspondence with him?
A. Yes, sir.
Q. State whether you received that letter.

(Showing witness a letter dated September 8th, 1882, from Michaels to witness.)

A. Yes, sir.
Q. From whom?
A. From Mr. Michaels.
Q. Is that his handwriting?
A. Yes, sir.

(Letter introduced in evidence.)

Cross-examined.

By C. O. TICHENOR, Esq.:

Q. You say you live in Kansas City?
A. Yes, sir.
Q. How long have you lived here?
A. Well, pretty near two years.
Q. You had your deposition taken in this case the latter part of last March?
A. Yes, sir.
Q. You swore then that you lived in the State of Kansas?
Q. I did at that time live in the State of Kansas.
Q. Where do you live?
A. I live now in Kansas City.
Q. When did you move this last time?

A. I came here about two weeks ago.

Q. Taken some little interest in this case on behalf of Mr. Olmstead, have you not?

A. Yes, sir.

Q. Assisted in getting up the evidence here. When you got this last letter here in September you promptly furnished it to Mr. Olmstead's attorneys?

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A. Well, I had talked to Mr. Olmstead. I told him about this letter and at the solicitation of his attorneys I gave it to them.

Q. When was it that Mr. Michaels first heard there was such a man as Mr. Olmstead?

A. I think that I wrote him before I went down to Detroit. If I remember right, I wrote that I was figuring with these people.

Q. Up to that time he did not know that such a man existed, did he, as far as you know?

A. I presume not; no, sir.

Q. And you were the instigator to get up this corporation?

A. Yes, sir.

Q. And Mr. Olmstead and the other parties?

A. Yes, sir.

Q. In getting up this corporation you did not figure on Michaels or Rogers or Stebbins taking any stock?

A. Not in the first; not in the thousand-bushel house.

Q. Did you, before you went to Detroit, figure in any shape or form or Michael- or Rogers or Stebbins being the stockholders in this contemplated corporation?

A. I do not know that I did.

Q. Don't you know that you did not?

A. No; I don't know that I did not.

Q. Don't you know as Mr. Olmstead has testified? You heard him testify here, did you not?

A. Yes, sir.

Q. Don't you know that Mr. Olmstead said, when you got up there to Detroit, when these people said they wanted some stock he says, "I cannot take that into consideration at all;" that all the stock has been taken? Don't you remember of his telling Michaels that?

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A. No; I don't know that I heard that in Detroit. I do not remember of his telling Mr. Michaels that.

Q. Do you remember of sending Michaels a telegram before you went up there from Kansas City?

A. I think I telegraphed him that I was coming with parties.

Q. Is it not true that you and Mr. Olmstead went there, and that Mr. Olmstead went there to Detroit for the purpose of entering into a contract with Michaels?

A. If everything was satisfactory.

Q. If everything was satisfactory, then it was the intention, as you understood it, of Mr. Olmstead to enter into a binding contract with Michaels?

A. For a thousand-bushel house it was arranged.

Q. Mr. Olmstead understood it that way, if things were satisfactory?

A. That was the talk at this meeting, if everything was satisfactory, just as I had represented.

Q. Was it not understood by you and Mr. Olmstead, when you started out for Detroit, that Olmstead was going there, providing everything was satisfactory, for the purpose of entering into a contract in reference to the erection of machinery here for making of glucose?

A. Well, Mr. Tichenor, I don't know whether that was the understanding with Mr. Olmstead; that was the impression—the understanding—that I had with these people.

Q. That Mr. Olmstead was going, if everything was satisfactory, he was to enter into a contract for a thousand-bushel house?

A. Yes, sir.

Q. Now, did you not telegraph before to Mr. Michaels to know whether or not he would show this operation to a party, pro-
172 vided that party would enter into a contract? Did you not telegraph him to know whether or not he would do this, provided you brought a party up there to enter into a contract?

A. I presume I did. I had a great deal of telegraphing backwards and forwards.

Q. Just look at that.

(Handing witness a telegram.)

A. Yes, sir; I think that must be it.

Q. You know it is—that is, to the best of your recollection?

A. Yes, sir.

Q. Your best recollection is before you started to Detroit that you sent telegrams to Michaels to know whether he would show the manufacture of this process provided you brought a party there who was willing to enter into a contract?

A. Yes, sir.

Q. This is the telegram: "If I come with party to contract will you show us result as you have written? Answer." You sent that message before you and Olmstead went there?

A. Yes, sir.

Q. When you got there, you say you got there—your recollection, then, is the same as Mr. Olmstead's—you got there Wednesday morning?

A. No; I don't think we got there in the morning. I think we got there in the night.

Q. What night?

A. We either got there on Tuesday night or Wednesday night.

Q. And during this time, from the time you got there until this contract was signed—that contract was signed about dark Saturday evening?

A. Yes, sir.

Q. During that time what were you doing there?

173 A. Well, we were figuring. I think I did very little talking. Mr. Olmstead did the talking and figuring.

Q. And the parties, what were they trying to do?

Q. To find out what there was in these goods.

Q. It was not for the purpose of finding out and seeing an experiment, because the experiment did not commence until Monday. Was he investigating the goods or inquiring about the cost of the machinery?

A. They were talking over the cost of the machinery.

Q. They were talking over the cost of the machinery?

A. Not particularly the cost. They were talking of the cost of the works; the cost of erecting a thousand-bushel house.

Q. That was the thing that you were discussing from Wednesday morning, presuming that you got there on Wednesday, until Saturday night?

A. I presume it was. I don't know that it was all the time.

Q. At any rate, Mr. Olmstead was not ready to enter into this contract until Saturday night?

A. Well, as I understand it there was nothing said. I heard nothing of the contract at all until Mr. Rogers presented that.

Q. Now, when was the talk about the two-thousand-bushel house? When did that first commence?

A. I think Saturday afternoon.

Q. It was suggested that proportionately you could build it cheaper—a two-thousand-bushel house than a one-thousand-bushel house?

A. Yes, sir.

Q. Olmstead did not determine on a two-thousand-bushel house, did he, right away?

A. He said he had no authority or no talk with any of the Kansas City people about a two-thousand-bushel house.

Q. Did he talk this matter over with you at the hotel that day?

174 A. I think we talked it over at the hotel Friday night. I told him that was the case—that we could build a two-thousand-bushel house proportionately cheaper than a one thousand. He said, "I presume we won't have any trouble to get these people to take hold on this if we can show them it is feasible and practicable."

Q. Were you present at the time this contract was signed?

A. I was.

Q. Do you know whether Mr. Olmstead had any talk about that document before?

A. No, sir.

Q. You don't know whether he did or not?

A. No, sir; I do not.

Q. You know that the contract was prepared?

A. Yes. sir.

Q. What was said about it there?

A. From the first that Mr. Rogers stated about it Mr. Olmstead said, "I cannot sign such a contract as that."

Q. Was it produced there?

A. Yes, sir; that was the first I had heard of it.

Q. Who read it?

A. Mr. Rogers read it aloud and then Mr. Olmstead reread it?
Q. Mr. Rogers read it first aloud?
A. Yes, sir.
Q. And then Olmstead read it over again?
A. Yes, sir.
Q. Olmstead knew about it?
A. Yes, sir.
Q. He spoke about not signing on account of personally binding to himself?
175 A. He says, "I cannot sign any such contract."
Q. That personal responsibility of Olmstead's was talked over before Olmstead out his name there?
A. Yes, sir.
Q. Olmstead spoke about the prices being too high?
A. He said it was an enormous price.
Q. He said that before he put his name to that contract?
A. Yes, sir.
Q. After the contract was signed, as you understand, you say the experiment was made on Monday morning?
A. It was the next Monday.
Q. Was it finished on Tuesday evening?
A. Yes, sir.
Q. Olmstead went home then?
A. We took the 9.50 train the same night for Chicago.
Q. Olmstead seemed to be satisfied with the experiment?
A. Well, he said that it was a marvelous thing—a good-looking thing—and he liked it.
Q. Then you came on to Kansas City?
A. Yes, sir.
Q. When do you say this first meeting was?
A. On Monday afternoon.
Q. These people got together then?
A. I got them together.
Q. Did you have more than one meeting?
A. Well, that was the only called meeting.
Q. Did it result in anything?
A. No, sir.
Q. Why was it they did not want to go into it?
A. Well, as I said the first start, when these prices were looked over, Mr. Leach made the remark that if this was to be a mutual company for all that it was an exhorbitant thing, and he remarked that some of them had put up the prices. Mr. Olmstead
176 says, That has nothing to do with it; we can buy the things ourselves.
Q. Did the meeting burst up at that time?
A. I don't know whether it bursted or not.
Q. They adjourned *sine die?*
A. Yes, sir.
Q. They were dissatisfied?
A. Yes, sir.
Q. Mr. Leach said he would not go into it?

A. He made this remark: If they are going to derive benefit from the stock I don't want them to make $30,000 or $40,000 on the works in putting them up.

Q. Did you understand that Mr. Leach stated before the meeting ended that he would not go into it?

A. Mr. Leach said, "I don't want anything to do with it if this contract is the basis."

Q. Before they left did not Mr. Leach say he would not have anything to do with it?

A. Mr. Leach said he did not want any stock in this.

Q. Then he did not believe Mr. Olmstead that this contract was a farce, and that it did not amount to anything and that it was not binding?

A. I cannot say. I do not know what he believed.

Q. There was a reason why he did not want to go into it?

A. For the same reason we thought these people had put two or three prices on their machinery, and that they were to have stock in the concern, and that if so he did not want to go into it.

Q. Did you not state that Mr. Olmstead stated to Mr. Leach then and there that the contract did not amount to anything; that they need not take a single particle of machinery, and yet, notwithstanding all that, he said, "I won't have anything to do with it"?

177 A. Yes, sir.

Q. Now, Mr. Harris, you are charged here in the amended answer in this case of being in a conspiracy with the plaintiffs Rogers and Stebbins and Michaels, to cheat and defraud Mr. Olmstead. That is untrue, is it not?

A. Well, I did not know I was in any conspiracy.

Q. As far as you are concerned everything was done in good faith?

A. Yes, sir.

Q. You never had any intention of cheating and defrauding Mr. Olmstead, did you?

A. No, sir.

Q. You say, Mr. Harris, that you believed, and that you told these parties that you so stated at the time Olmstead signed this contract, that he was not to be bound on that contract?

A. Exactly.

Q. It was so understood—the whole thing amounted to nothing?

A. Well, I did not say it amounted to nothing. We went down, as I say, to consider a thousand-bushel house, and Olmstead says, We can put up the thousand-bushel house if we cannot get these people to go on and organize a house for 2,000 bushels.

Q. Your understanding was that the transaction was not a farce—this understanding between Michaels and Rogers and Olmstead?

A. No, sir. It meant this: If this company could be raised for two thousand bushels there would be more benefits than for one thousand bushels.

Q. And then, in case the corporation was formed, Mr. Olmstead was to be bound on this contract?

A. No, sir; there was to be another contract made.

Q. So, in any event, Mr. Olmstead was not to be bound on this contract?

A. If the company was not formed.

178 Q. If it was formed?

A. The company was to be bound.

Q. Mr. Olmstead was not to be bound in any event?

A. Not on this two thousand bushel house contract.

Q. And so it was just the same as though the contract was not signed?

A. Yes, sir.

Q. If it was raised Olmstead was not to be bound?

A. Not on the two-thousand-bushel house.

Q. Could he be on the one-thousand-bushel house?

A. That was another thing. Mr. Olmstead and I thought if the company could not be raised on the two-thousand-bushel house we could take this Gillis house and put in a thousand-bushel works.

Q. Along in June you say you wrote a letter to Mr. Michaels, did you not? Did you not state in that letter to Michaels to push Olmstead on this contract; that he would not do anything?

A. I may have done it, because the difficulty was with Mr. Olmstead and Mr. Wynn and all these peoples.

Q. Just explain to the court and jury how Mr. Olmstead could be pushed on a contract which did not amount to anything and was understood to amount to nothing at the time he signed it.

A. Simply this: Mr. Olmstead was not making any special effort.

Q. How did you suppose Mr. Olmstead could be pushed on a contract that you knew and you swear you knew was not to be binding on him in any event?

A. Because the understanding was that he was to try to raise this company, and I thought he was not making an effort.

Q. There was nothing said in this contract about his trying to raise a company.

A. I understand that.

Q. Just look at that.

(Handing witness a letter dated June 3, 1881.)

179 A. Yes, sir; this is my letter.

Q. In that you say to Michaels, don't you, "I should like if you could get at him"—that is, Olmstead—"in some shape and make him come to time. He promises me, as strong as he could *to* make it, that he would pay up."

(Reads balance of letter.)

Q. You wrote that, did you not?

A. Yes, sir; that is all true.

Q. These samples that you showed here to Mr. Olmstead you showed before you made this visit to Detroit?

A. Yes, sir.

Q. He was not satisfied to take these samples, was he, as what could be done?

A. Well, he thought from the elaborate description that I had

given of it that it could not be done. He says, "It don't look possible to do. It don't look as if there was that much in it."

Q. He was not satisfied to take your word?

A. No, sir.

Q. He was not satisfied to take these samples alone, and that was the reason why he went to Detroit?

A. Yes, sir.

Q. He went to see it done and see the thing made?

A. Yes, sir.

Q. Now, you say Mr. Rogers told you afterwards that these samples which you showed to him was made by the dry process?

A. No, sir; he told me they were made by the wet process. They were glucose goods mixed with it.

Q. The goods made by the dry process are ordinary glucose goods?

A. No, sir. I never have seen any glucose goods made by the dry process.

180 Q. He told you, then, that this syrup was made by the wet process?

A. That was the glucose; the starch goods mixed with it.

Q. Mixed with what?

A. Mixed with the goods I had; I did not say they were all starch goods—the samples that I brought.

Q. You knew that fact when you showed them to Mr. Olmstead, did you not?

A. That they were not dry-process goods?

Q. Yes, sir.

A. No, sir.

Q. You say you told him that it could not be made?

A. Yes, sir; this was awhile afterwards.

Q. You say that you told Rogers that these goods could not be made by the dry process?

A. Perhaps I told Rogers that in June or July afterwards.

Q. Have you ever seen any goods made by the wet process?

A. Yes, sir.

Q. Did you know at the time that you showed these goods to Mr. Olmstead there—had you not discovered from the looks of them that they could not have been made by the dry process?

A. No, sir.

Q. When did you discover it?

A. I discovered it after this manner: In keeping these goods so long—these goods that I just brought here—and comparing them with the goods that were brought from Detroit, I saw that there was no comparison.

Q. The Rochester works that you were interested in erecting, were they built in Kansas City?

A. Yes, sir.

Q. They were on the dry process the same as these here?

A. They were put up with the idea of adopting the dry process.

181 Q. You never made any effort to conceal from Mr. Olmstead that you were interested in this matter?

A. There was nothing said about it.

Q. Was there not something said about it at the time you were at Detroit?

A. Yes, sir.

Q. Did you not tell him that you had an interest in it?

A. After this contract was signed, I did.

Q. Did he make any objections?

A. No; he did not ask me what interest I had; I told him, he says, "It is right enough that you should have pay."

Q. It is right enough that you should take an interest.

A. Yes, sir.

182 CHARLES B. LEACH, being duly sworn on the part of the defendant, testified as follows:

Direct examination:

Q. You are acquainted with these parties, Mr. Olmstead, Mr. Michels, and Mr. Harris and Mr. Rogers?

A. I am acquainted with Mr. Olmstead, and Mr. Michels a little.

Q. I say you are acquainted with Mr. Rogers, Mr. Michels, Mr. Olmstead, and Mr. Harris?

A. I am not acquainted with Mr. Rogers. I never saw him.

Q. Are you acquainted with the others?

A. Yes, sir; partially. I saw Mr. Michels once—when he came here in the spring of '81.

Q. How have you been engaged in business?

A. Lumber business.

Q. With whom?

A. Mr. Olmstead; Leach, Hall, and Olmstead were associated together going—been here for fourteen years.

Q. State what you know about how Mr. Olmstead came to go to Detroit in March.

A. Well, it was at the suggestion of Mr. Harris proposing the thing at a meeting at the Lindell hotel.

Q. What was the proposition? What was said and done at that meeting at the Lindell hotel, who were there, and what you did at that meeting, and all about the meeting?

A. Mr. Harris was there, and Mr. Deavers, and Mr. Hall, Mr. Winn, Mr. Olmstead, and myself and Chase, Lawyer Chase.

Q. What did you meet there to do or talk about?

A. To discuss this question of raising a company there.

183 Q. A corporation?

A. Yes, sir; an incorporated company, as I understood.

Q. For what purpose?

A. For the purpose of manufacturing glucose.

Q. A proposition was made—what was said about this dry process?

A. I think Mr. Harris made a statement in regard to that, and

also Mr. Dever. They said it was superior to the wet process, much cheaper, took less corn, less time to make the goods.

Q. Were there any samples exhibited on that day?

A. Yes, sir; they showed samples of syrup and sugar both, I think. There was a bottle of syrup produced. I don't know whether there was one or two cases of sugar.

Q. Was there anything said about the amount of stock that was to be taken by the different parties there?

A. At that time they figured it about $35,000 to start up this Gillis, a one-thousand-bushel house.

Q. Was there a willingness on the part of those parties if the thing should prove satisfactory that they would take it?

A. There was.

Q. How came Mr. Olmstead to go to Detroit?

A. Well, we were not willing to go ahead on that representation—on a representation of this kind without seeing the process investigated, and probably we would pledge ourselves—that is, if it were favorable, that we would take so much stock conditionally on condition that everything was satisfactory and as represented — Mr. Harris and Mr. Devers.

Q. Was it known or was there anything said as to the terms by which the use of this dry process could be obtained from Detroit; was that known?

A. No; I don't think that it was. I think Mr. Olmstead proposed—there was something said about his going there alone.

184 Harris said it would be no use for him to go there alone; that he could not get the secret without his being there. Consequently he volunteered to go himself and the folks there said they would bear Mr. Olmstead's expenses.

Q. When did you first see Mr. Michels after that?

A. The first I saw of Michels was Sunday morning, at Mr. Olmstead's house.

Q. What occurred there?

A. I went in there in the morning. I did not — of — -act of Mr. Michels' arriving. Mr. Olmstead said, Step into the parlor. I was introduced to Mr. Michels there as the man who came here to incorporate this company and to start the works.

Q. Did you have any conversation in regard to your proposed company?

A. No special conversation. Then I left and went to my own house. They said they would like to have me go down to the Gillis house. I think about 10 o'clock—this was, perhaps, 9 o'clock in the morning——

Q. Was it made known there to Mr. Michels that you were one of the parties?

A. Why, it was understood that I was to take an interest—five thousand dollars.

Q. Did you accompany Michels and Olmstead to the Gillis house?

A. Mr. Olmstead met us there, and Mr. Harris.

Q. What was done?

A. After looking over the building he went through it—Michels did. I think he said it was rather unsafe and not adapted to the business, for the machinery or something—I don't recollect just what objection he did make. He thought it would not do.

185 Q. What was done next?

A. We went do*nw* below from there to find a new location. The water was the main thing that he was looking after—where he could get some good water. They went down below—down as far as the Chicago and Alton elevator and, I guess, below that. We did not find anything there that was satisfactory, and I came home. After dinner Mr. Michels and Mr. Harris came over to my house. I believe Mr. Olmstead was with him, and I accompanied them out in McGee's addition. They looked there at th at spring. He looked at that. The water was considered good, I believe, but not sufficient quantities. They said they could not work there. Finally we went around to the Kaw river; that is west of the water works. The location seemed to be favorable. After coming home Mr. Michels said there was a question about the quality of the water. I told him I could give him an analysis of the water from the records. The water works company had made an analysis of the water—made by experts at St. Louis, I think. I got the analysis—a copy of it—and took it to Mr. Michels *at the* in the afternoon at the Lindell hotel. He merely glanced at it. He did not make any reply specially.

—. Then there was nothing more until the meeting at the Lindell? Just state fully what occurred at the meeting at the Lindell hotel.

A. I think this schedule——

Q. T*j*ose gentlemen who were there, who were they and what capacity did they come there in?

A. They came there in the interest of the company or proposed company.

Q. Proposed company?

A. Yes, sir; proposed members. I think Mr. Hall and Mr. Winn was there. I don't remember whether Mr. Chase was there or not; I think not. Mr. Hall, Mr. Olmstead, Mr. Harris, Michels, and myself.

186 Q. Go on and tell us as well as you can what happened there.

A. I think the schedule of prices was read over, and I made some objections to them as being too high, and then the contract was finally produced—this contract which you have.

Q. Had you known or heard of that before?

A. I had not heard of any such thing. That was my first knowledge there was such a writing in existence. I was somewhat surprised myself when I saw it. I raised objections to the price of this machinery, and I said it was double what it should be as far as I knew on some things. I had other business. I had figured with a party from Sandusky, Ohio; he was putting the machinery into this distillery; I had got the figures from him on the boilers and the engines and so on. I believe that was all—boilers, en-

gines, shafting, and so on; and the list of prices—well, the boilers, I don't recollect just the figures, I know it was one-half what his schedule showed. I told him I was not willing to go ahead with any such arrangement as that. At that Olmstead jumps up and says, "O, this has nothing to do with this matter, Leach, we have a right to buy this machinery wherever we are a mind, and turned to Harris and says, Is not this so? Harris said, Yes. Michels sat right in front of him, and he declined to make any reply whatever.

Q. What was said about the character of these specifications?

A. I thought there was too much latitude. For instance, it did not specify any given thickness or the quality of the iron, the quality of the material of any kind whatever. I wanted to know and understand, if I was going into this thing in black and white, what we were going to have. I did not do things in that sort of a way. I called it a very loose contract. It was a contract I never would have signed. I thought it was pretty soft signing it; I thought it was so myself.

187 Q. What did Michels say about these prices?

A. He says he was not coming here to put up the works for nothing. I said, If you are coming—(could not hear balance of answer.—(Rep.)

Q. What had been said about Michels having an interest in this company?

A. There was nothing said about his having an interest in the one-thousand-bushel house.

Q. Since he came here?

A. I don't remember anything specially. I understood he wanted in the neighborhood of twenty per cent. of the entire stock—him and his folks there—Rogers, Stebbins, and himself.

Q. Anything said about the kind of engines and boilers?

A. I asked him what kind of engines he expected to get. He said a slide-valve engine. I want you to understand that is not a first-class engine, nothing else than a compound engine will answer our purpose.

Q. What did he say to that?

A. I don't remember that he said anything. There was no further controversy. I think after that Mr. Hall withdrew and adjourned until morning. I declined to have anything to do with it on that basis.

Q. Did you have any further talk with Mr. Michels?

A. Nothing, only a few words in the morning. I showed him that they misrepresented prices for his machinery; that I was not willing to go in. I left the office. I did not stay to hear any further gab about it.

Q. Did you see these samples of glucose that Mr. Olmstead brought back?

A. Yes, sir.

Q. When did you see them?

A. I don't remember when they were first produced to me. I saw them once in Mr. Olmstead's house.

Q. You don't know how long after they were brought back?
188 A. No, sir; a day or two, I think. I don't remember positively when they were first presented to me.
Q. State what the appearance and character of the product was.
A. Well, I think it was a villainous compound. I said it was not fit for niggers to eat.
By WARNER: When was this?
A. In his own house. My wife was over there and tasted it. It was bitter.
Q. What did Mr. Olmstead have to say?
A. He did not seem to like how we called it. He said we did not know what syrup was. Says I, All right; all right. If you expect to sell such stuff as that you will have to find a different community from this.
Q. State what it was—whether it was bitter; whether it was fit for any use.
A. I did not consider it myself. It was not the kind I am used to.
Q. Have you seen it since?
A. This is the first I have seen it.
Q. Have you seen it since?
A. No, sir (taking up bottle); same thing, I should judge, though.
Q. What reply, if any, did Michels make to you when you told him that the most of that machinery was charged above actual prices?
A. He didn't deny it. He said we could not expect him to come here and do the work for nothing. I said, Of course not, but I don't want to have you make over fifty per cent. on that arrangement, which I believed there was, as far as I had investigated.
Q. As to your charge that there was too large a margin?
A. I think he denied it, partially. I think he owned,
189 though, he did get a margin and expected to make something out of it.
Q. Was there anything said about these specifications not including anything that went into the building?
A. I did not have any such conversation. I think he said to Mr. Olmstead there were some pulleys that was not reckoned in; something of that kind, that didn't amount to anything.
Q. How did that syrup that was brought back from Detroit compare, in your estimation, *compare* with the syrup that was shown by Harris?
A. It did not compare at all.
Q. What kind of syrup was that first?
A. The first was very fair syrup and the sugar was nice, too.

Cross-examination.

By C. O. TICHENOR, Esq.:

Q. You are still a partner of the defendant, Mr. Olmstead?
A. Yes, sir.

Q. When was it that Michels told you that he — a good margin on this contract and expected to make out of it?

A. I think it was Monday morning. He said it at the office. He said he did not come up here to do the work without making something out of it; that is what he said.

Q. He had a good margin in it and expected to make something out of it?

A. That is what he said.

Q. That was in the morning?

A. That was Monday morning.

Q. That was after the meeting at the Lindell hotel?

A. Yes, sir.

Q. What you said about the location, I understood, was on Sunday?

A. Yes, sir.

Q. As far as you heard, Michels was intending to make
190 something. He never claimed but he had a margin in the contract and expected to make off it, did he? Of course, he thought he could make off *ot* it?

A. He did not claim it was anything——

Q. He did not claim there was any fifty per cent. in it, but he claimed he had a good margin in it; was not that the thing?

A. It was as low as he could afford to do it.

Q. Did he speak about his guarantee that he had given, a guarantee to do the work well?

A. *Do.* I did not consider his guarantee worth a cuss. I did not consider his guarantee worth——

By the COURT: You answer the questions that are asked you.

By TICHENOR: What makes you think it was not worth anything?

A. I had looked him up that morning in the commercial reports.

Q. You have considerable feeling in this matter?

A. I have a feeling against any man when he undertakes to perpetrate a fraud?

Q. You are a great deal interested in this case?

A. No interest.

Q. If there should be a big judgment against your partner it might affect your firm?

A. No, sir; Mr. Olmstead has got a surplus large enough to pay off this judgment.

By the COURT: We want you to answer the questions that are asked of you and — answer questions that are not asked.

By Mr. TICHENOR: You stated in your examination-in-chief that you thought it was a very foolish thing for Mr. Olmstead to enter into this contract?

A. (Could not hear witness'*es* answer.)

Q. You say you thought it was a very foolish thing, a very soft thing, for him to enter into this contract?

A. I thought they could not have got me into it.

191 Redirect examination.

By Mr. GAGE:

Q. That conversation was Monday morning, and it was after you had the Lindell-hotel meeting, you had the meeting at the Lindell hotel Monday afternoon?

A. The meeting was in the afternoon, this was the next morning.

Q. You said Monday morning?

A. I did not mean Monday morning. I mean it was the following morning.

Recross-examination.

By Mr. TICHENOR:

Q. When did you finally concluded you would not go into this enterprise?

A. Right there at the meeting at the Lindell, as soon as I seen these specifications and Michels did not seem to show any disposition to make any concessions in this matter.

Q. That was at the Lindell?

A. Yes, sir.

Q. He did not manifest any desire to make concessions at the Lindell, and you right then and there concluded you would not have anything more to do with it?

A. No, sir; there was another thing besides that: Mr. Rogers had gone, as I understand, and he was incompetent to carry out the contract.

Q. Was that the reason that you backed out?

A. Not altogether.

Q. Did you want to carry it out?

A. No, sir; I did not want to carry it out on that basis.

Q. So that it didn't make any difference to you whether Rogers came or not?

A. No, not any, for I had no interest.

192 By the COURT: You understood that the contract was not binding?

A. That was my understanding.

Q. Then, what complaint had you of the prices of the articles if the contract did not bind the parties?

A. Mr. Michels claimed it did bind—that is, he did not make any—he did not say. He virtually said nothing.

Q. Michels claimed it did. In what way did he claim that it did?

A. That he did what?

Q. You say that Michels claimed that the articles did bind them. In what way did Michels claim that the articles were binding?

A. He did not say very much about the articles. He said very little.

Q. How came you to the conclusion that Michels insisted on the contract?

A. He claimed that it was low.

Q. He insisted on the contract, did he not?
A. I could not say he did——
Q. What does that mean?
A. That he insisted on the contract?
A. Yes, sir.
A. Well, I said this: He did not make any defense or manifest a willingness to do any better.
Q. He insisted on his contract?
A. He insisted that the prices were low and I insisted that they were high. At that we differed.
Q. You in this conversation treated it as a contract, did you not?
A. We did not treat it at all. I did not treat it at all.
193 Q. Did you not understand from the *reat* that it was not to bind anybody?
A. Yes, sir; it did not bind——
Q. Then what was the reason (could not hear the balance of question.—Rep.)?
A. Why we did not see fir to go on. They refused to go on and make up the company.
Q. Were you trying to make a new contract?
A. Yes, sir; or to reduce this one.
Q. To reduce the old one?
A. Well, no; to make a new one, as I understood it. My understanding was we was to have a new contract if we went on; that was not good for anything.

194 UNITED STATES OF AMERICA, } *sct:*
Western District of Missouri, }

In the Circuit Court of the United States for the Western District of Missouri, Western Division.

J. MICHELS }
against }
GEORGE P. OLMSTEAD. }

You, the above-named J. Michels, or Tichenor, Warner & Dean, your attorneys of record, are hereby notified that on Thursday, the 12 day of October, A. D. 1882, the above-named George P. Olmstead will in the above-entitled suit, at the law office of *office of* Brown, Rogers and Locke, at No. 28 Erie street, in the city of Buffalo, in the county of Erie, in the State of New York, take depositions of H. Hamlin, to be used as evidence on the trial of said suit and on the hearing of each and every motion and application therein. Said depositions will be taken because the testimony of said witness is necessary on the trial of said action, and said witness lives more than one hundred miles from the place of trial of said action; and that the taking of said depositions will be commenced at nine o'clock a. m. of said day, and that the taking of the same will be adjourned and continued from day to day, Sundays excepted, at the same place until the taking of the same is completed.

Dated this first day of October, 1882.

PEAK & YEAGER,
GAGE & LADD,
Attorneys for Defendant.

Service of the above notice is hereby accepted and issue of *dedimus*, filing of interrogatories, and all exceptions as to time are hereby waived this 2 day of October, 1882.

TICHENOR, WARNER & DEAN,
Attorneys of Record for Plaintiff.

195 UNITED STATES OF AMERICA, }
Northern District of New York, } ss:

Be it remembered that on this twelfth day of October, A. D. 1882, I, William Johnson, a notary public in and for the county of Erie, New York State, duly appointed, commissioned, and qualified as such, did, under and by virtue of the several acts of Congress authorizing and regulating the taking of depositions *de bene esse* in civil causes depending in the courts of the United States, cause to come before me, a*y* the law office of Bowen, Rogers & Locke, at No. 28 Erie street, in the city of Buffalo, in the county of Erie, in the State of New York, and between the hours of nine o'clock a. m. and six o'clock p. m. of said day, the following person, to wit, Harry Hamlin, to be examined as a witness in a cause pending in the circuit court of the United States for the western division of the western district of Missouri wherein J. Michels is plaintiff and George P. Olmstead is defendant.

WILLIAM JOHNSON,
Notary Public.

9 A. M., 12*th Oct'r*, 1882.

Present: Jacob Michels, plaintiff; Goodwin Brown, of counsel for plaintiff, of the firm of Green and Brown; Charles B. Wheeler, of counsel for defendant, of the firm of Bower, Rogers and Locke.

At the request of the plaintiff and his counsel and defendant's counsel (the witness, Harry Hamlin, being unable to be present at the hour designated in the notice in consequence of a prior engagement) I adjourned the further taking of this deposition until three o'clock p. m. of this day, then to be continued at the place and between the hours aforesaid.

WM. JOHNSON,
Notary Public.

196 12TH OCTOBER, 1882—3 p. m.

At the office of Bowen, Rogers & Locke, 28 Erie street, Buffalo, N. Y.

William Johnson, notary public.

Present: Jacob Michels, plaintiff; Manly C. Green, of the firm of Green & Brown, of counsel for plaintiff; Charles B. Wheeler, of the

firm of Bowen, Rogers & Locke, of counsel for defendant; Harry Hamlin, witness.

Pursuant to adjournment, on this 12th day of October, 1882, at 3 o'clock in the afternoon, at No. 28 Erie street, in the city of Buffalo aforesaid, I continued the taking of said deposition as follows:

HARRY HAMLIN, of lawful age, being by me cautioned and sworn to testify the whole truth and nothing but the truth, and carefully examined, deposeth and saith:

Examined by Mr. WHEELER:

Q. What is your age?
A. 27.
Q. Do you reside in Buffalo.
A. I do.
Q. What is your occupation?
A. Vice-president of the Buffalo and American grape sugar works, manufacturers of grape sugar, glucose, and syrup.
Q. How long have you been engaged in that business?
A. Since 1874.
Q. Are you practically familiar with the mode of manufacture?
A. I am; it is part of my business.
Q. Superintending the manufacture of the product?
A. Yes.
197 Q. You have two factories in the city?
A. Yes, and one in Peoria, Illinois, and another in Leavenworth.
Q. You have supervision of all four of these?
A. Yes.
Q. And in those factories you manufacture what?
A. Syrups, table syrups, glucose, and grape sugar, in its different forms, for commercial purposes.
Q. Are you familiar, more or less, with the different processes of manufacture?
A. I am.
Q. Is there such a process known as the dry process?
A. Yes. It is usually called dry process in distinction from what is commonly called wet process.
Q. What are the general differences between the two processes?

(Objected to as incompetent, immaterial, and irrelevant.)

A. What is commonly termed or understood in our business as the dry process is the manufacture of glucose in which the process of manufacture treats the corn usually as a whole state and without subjecting it to any steeping process, and the conversion is made with the grain in that condition. Sometimes it is cracked out or sometimes it is prepared as corn meal ground as ordinary corn meal. In this state it is converted direct—that is, the application of the steam and acids is done without manufacturing first starch. The process of refining the material when converted is substantially the same as in the wet process. The wet process is, as

it is ordinarily considered, *is*, first treat the grain, grind it, separate the starch from the offal or feed, which is done ordinarily by means of sieves, and then continue the process as it is ordinarily done in the manufacture of starch in starch factories; then to convert this starch, after the same has been treated, with a solution of
198 caustic alkali to rid it of the large percentage of gluten in the grain. The starch is then washed and every care is taken to get it in as pure a shape as possible.

The next step is to convert this with the action of the different acids.

The chief difference is, in one case you first convert the grain into starch and in the other you do not. The main difference is in the wet process—you first separate the starch from the corn and convert that; in the dry process you convert the whole product.

Q. Have you any experience in what is known as the dry process?

A. Yes, sir; we have had considerable experience.

Q. Where and when?

A. The first experience was in putting into operation what is known as the Mambre process, which is an English patent owned and invented by Alexander Mambre, of London, England. This was in the spring of 1875, in our Buffalo works. We experimented with that process for over two years; in fact, I will say three years. Mr. Mambre furnished a man, who came over from England to show us how to work his invention; that was his object in coming over. Notwithstanding this and all the skill and experience that we had we were unable to turn out anything which was a success in any sort of a way, commercially speaking. I am familiar also with all the late patents that have been issued, of which there are quite a number of different methods of operating the so-called dry processes. I never have been able to distinguish practically any difference in these, so far as making a successful operation.

Q. Have you ever had any other experience except in the Buffalo works?

A. Yes; we have, more or less, on everything of the kind that you may say is new in our business; we have been obliged
199 to buy a great many patents, and we have always made a practice of investigating such as is offered with the view of satisfying ourselves whether there is anything that would accrue to our benefit if we should adopt it. In this way I have had brought to my notice a good many different schemes for operating this process.

Q. Did you ever have any experience in the dry process in the American works?

A. We have; more especially in a small way there, in relation to these different schemes that have been brought to us.

Q. Now state what difficulty there is in manufacturing the merchantable article by what is known as the dry process?

Objected to as incompetent, irrelevant, and immaterial.

A. The main difficulty of working anything on the dry system,

in comparison with the wet, is because of the large amount of nitrogenous matter, which is composed of the albumen, gluten, oil, &c., naturally in the corn; the impossibility of sufficiently getting rid of these materials in order that the product may be sufficiently pure when done and completed to remain in its natural condition without either fermenting or congealing; the expense of the process, in comparison with the wet process, if one attempts to sufficiently rid the substance treated from these impurities. Another great difficulty, also, is that there is no known way of making a complete conversion where the substance is treated in the dry process. The main reliance that one must have in producing good commercial glucose must be the perfect conversion, for without this there is always an expense, trouble, and an inferior produced.

Q. Is this true of all the products made from corn by this process—I mean the product of grape sugar and glucose?

Objected to as immaterial, incompetent, and irrelevant.

200 A. It is true of all that I have ever seen or that has come to my knowledge. It is more particularly true where what is known as glucose is produced—that is, the liquid syrup—the great consumption now is of that product as compared to what is called grape sugar.

Referring now to the solid matter the trade is extremely limited, is growing less every day, and when you work under the dry process in my opinion it is impossible to produce a grape sugar that will answer for confectioner's purposes which is getting to be almost the sole consumption of this product.

Q. Do you think of anything further to the advantage of the defendant in this action? If so, state it fully.

A. I do not.

Cross-examined by Mr. GREEN of counsel for plaintiff:

Q. How long have you been in this business?

A. Since 1874.

Q. You have been connected with your father and brothers in this business?

A. With my father and brother.

Q. What did you say your part of the business was?

A. My part of the business is and always has been to have sole charge of the manufacturing department.

Q. The sole charge in all of the factories and you have four?

A. Yes, sir.

Q. And they are doing a very large and expensive business, all of them?

A. Yes.

Q. And are the main manufacturers of that staple in this country?

A. Yes.

Q. Do you duties as such overseer or superintendent call
201 you to these different factories?

A. They do. We have, of course, experienced men who

attend to the direct operation at the works? They all take their directions from me.

Q. You have men over each department of each of these factories?

A. Yes. In the first place we have chemists, whose business it is to superintend the works that they are located in. They have charge of the manufacture of the products. In addition to that we have skilled men in every department.

Q. And they are all under your general supervision?

A. Yes.

Q. So that you don't give any of your time to the details of this manufacture in any of the factories?

A. I don't at the present time, but I did at the start.

Q. For how long?

A. Up to within the last year.

Q. These men make reports to you in their different departments. For instance, you don't make any experiments personally?

A. I have made them.

Q. Are you a chemist?

A. No, sir.

Q. The main portion of your knowledge in reference to this process is derived from the statements made by these men in your employ?

A. No, sir.

Q. Then tell me how you get your information?

A. When I first went into the business I was 18 years old. I first went into the Buffalo works to learn the business and I did so. Since I learned the business our capacities have been enlarged.

Q. How long were you engaged in learning the business?

202 A. From 1874 to the fall of 1879, in Buffalo. We then bought the Peoria sugar refinery, and I went there and started the works myself and was there six months in sole charge, superintending.

Q. Did you in any of these years act as chemist?

A. No.

Q. Did you assist in the manufacture personally?

A. I did.

Q. For how long?

A. All during this time. I have to do it now occasionally.

Q. What process are you using in your factories at the present time?

A. What is commonly known as the wet process.

Q. In all your factories?

A. Yes.

Q. Do you know of any factories where the dry process is used at the present time?

A. I do not. I know of several that have tried it.

Q. You say different parties have different patents upon this same method known or spoken of as the dry process?

A. Yes, sir.

Q. Do these methods differ considerably?

A. I don't think they do.

Q. In what do the different methods of the process known as the dry process differ?

A. As far as I have been able to judge, there really is no practical difference in the operation as an entirety; the difference is like as follows: One man may take the corn in its natural state and have a peculiar mechanism for cracking it up, reducing it from its original state to some other state. He may then first put it into an open tank and steam it. He may then put it into a converter and there convert it with sulphuric acid or some other form or
203 forms of acid. One's mechanism for the converter may differ a little from the other. One may have a certain kind of filtering apparatus for filtering the product after conversion. One may use a press of ordinary construction or a centrifugal machine or they might use the centrifugal machine in combination with the filter press.

There are other patents that describe the operation where the corn is first ground into corn meal and sufficiently treated about as I have given it. In some instances a man uses one kind of mechanism and some another. They all tend to produce the same result. One man claims that his process is better than another, for the reason that he takes less machinery or can do it in equal time. They have to put in something sufficiently new in order for the Patent Office to grant them a patent.

Q. Then, some of the methods of this dry process have the combination of the wet process also, don't they?

A. No, sir; not as I understand we are distinguishing them here this afternoon.

Q. Take, for instance, the placing of the product in a tank and steaming it. Is not that the same as steeping the product by the wet process?

A. No; it is not the same operation at all.

Q. But you do say further that you understand that it is to attain the same object in the dry process as in the wet process?

A. No, sir.

Q. Don't you say that steeping the corn by the wet process is for the purpose of softening the corn?

A. That is one object. It is not the great object.

Q. You say that one of the great difficulties of the dry process is that there is no known way of making a perfect conversion of the grain?

A. Yes; I said so.

204 Q. How can it be shown that there has been an improper conversion after the manufacture of the grain into this product?

A. How can it be shown?

Q. Yes.

A. It can be shown very easily. After all the conversions that ever I saw, where the grain was treated whole—that is, in the dry process—taking the test.

Q. State what the test is.

A. In taking what is called the test it is subjected (the converted liquor), as the conversion is carried along, to the action of a solution of iodine. It is the customary test that is necessarily introduced in the business in order to determine the amount of saccharine matter produced as the conversion proceeds. Starch can all be converted into saccharine substances, gluten cannot. It remains gluten, or what is practically called in the business "dirt." The practical way to determine this shows itself in taking the test, as the few drops of the converted liquor are introduced into a test tube the purity or impurity shows itself immediately. Where gluten is present it discolors the iodine—turns it a dark greenish color—and if carefully done by an experienced man is very apparent. The next way of discovering a perfect or imperfect conversion is what is called the first filtration of the liquor after neutralization, where acid is used for the conversion. Where a perfect conversion is made the liquor filters very readily and at small expense. Where an imperfect conversion is made it takes a long and expensive handling with mechanism, required because of the presence of so much foul matter unconverted, and then right along through the after process applied there is less trouble from an after conversion than from an imperfect conversion, exactly on the same principle that the cleaner water is the easier it is to filter,
205 and the more dirt there is in it the harder it is to filter.

Again, one of the greatest difficulties where an imperfect conversion is made is in the evaporation or concentration of the liquid in order to get it into a commercial state. I have seen a vacuum pan that was 17 feet high, 10 feet in diameter, with about a fill of 6 feet of liquor, throw out two-thirds of this mass while it was being boiled and under a low vacuum at the time simply because there was so much nitrogenous matter present that it was impossibly to shut off the steam in time to prevent the mass boiling over.

Q. Were these goods and this product last spoken of by you properly treated before going into this tank?

A. They had the best we knew how.

Q. Has that been the case with any other of your goods?

A. I never saw it but once.

Q. What was the cause of that?

A. I have given you the reason.

Q. Was it not the treatment that caused the nitrogenous matter?

A. No, sir; it was in the grain.

Q. By what method was that grain treated, wet or dry.

A. The dry process.

Q. By the dry process?

A. Yes.

Q. Have you tried other experiments other than that by the dry method and other than with these goods that you have spoken of?

A. I don't think you understand the answer I made.

Q. Did you ever know of goods which were put in marketable

shape by the dry process to ferment or congeal in manufacture?

206 A. I never knew them to do anything else except where the water in operation of concentration was so thoroughly eliminated or boiled out that there was not sufficient left in the goods to make a food for fermentation or congealing. What I meant to be understood by that answer is this: Glucose or syrups to be put into a marketable condition have to be so that they can be drawn from a barrel or any other package that may be used for holding it. I never knew any goods made on the dry process where the evaporation was carried on so as to produce a commercial article but what those goods either fermented or congealed.

The explanation that I made pertained to samples that I have seen made under the dry process, and in order to make them keep without either of the above conditions ensuing they boiled out all the water they possibly could, so that the goods could neither move one way or another, and they were therefore not in a commercial state.

Q. How is that with goods treated by the wet process? Did you ever know them to ferment or congeal?

A. I have in the early stages of the business.

Q. Don't you know of any lately?

A. Are you referring to our product?

Q. To any product.

A. Yes; a large amount, but it was owing to the improper manipulation.

Q. Is it owing to the improper elimination of the water from the goods by the wet process—the same as by the dry process?

A. No, sir; I did not give it in the first instance that it was owing to the elimination of the water that prevented fermentation in the dry process.

Q. The effect of water is the same on goods manufactured by each of the processes, is it not?

A. No, sir.

Q. Goods manufactured by the wet process do ferment and

207 congeal?

A. They do where the manipulation of the operation is not properly conducted.

Q. What makes them ferment and congeal—in other words, is it not because the manipulation you speak of has not eliminated the water from these goods?

A. No, sir.

Q. Is it not the water that makes them ferment and congeal when they do ferment and congeal?

A. No, sir.

Q. So you say goods manufactured by the wet process may have a certain proportion of water in them and ferment and congeal, and other goods manufactured by the same wet process may have the same amount of water and not ferment or congeal?

A. Yes, sir; decidedly.

Cross-examined by plaintiff, JACOB MICHELS:

Q. What do you mean by the making of a perfect conversion, as spoken of by you?

A. Wherever any portion of the mass treated is thoroughly converted.

Q. Converted into what?

A. It depends upon what you are trying to make.

Q. If you are trying to make grape sugar.

A. Grape sugar, then.

Q. Is the whole converted into grape sugar?

A. Yes, commercially speaking.

Q. Do you convert all of the mass into grape sugar?

A. Yes; where we treat starch. In the wet process the true conversion is applied to the starch matter, which is first separated in the process of making starch from the grain itself.

Q. How can an improper conversion be shown or proven
208 after the manufacture of the product into commercial shape—in the finished article?

A. By analysis, one way.

Q. What is the analysis—what do you do and who does it?

A. I have seen it done; I have not done it myself.

Q. Have you ever done it yourself?

A. No, sir.

Q. Can you make an analysis of the finished article?

A. No; I can tell from its appearance.

Q. How will an improper conversion show from an analysis of the finished article?

A. It shows in the different products differently. For instance, in commercial glucose the analysis is different from the analysis of grape sugar. In glucose you can show by analysis an imperfect operation by the presence of too great an excess of ashes. These ashes are composed of the impurities which have not been sufficiently eliminated in the manufacture.

Q. When we put the meal into the converter in our way what portion of that is not converted?

A. All the gluten and other nitrogenous substances in the corn.

Q. In the wet process what do you do with that?

A. We eliminate it in the manufacture of starch as perfectly as possible.

Q. What proportion of starch is there in the wet process? Do you take out the gluten, for instance?

A. That depends entirely on the completeness of the arrangement and the skill of the parties.

Q. What amount of saccharine matter is there contained in corn?

A. It depends on the quality of the corn.

209 Q. Take the average—ordinary corn grown West?

A. With first-class skill in the manpulation, good machinery, carefulness, and attention devoted to the entire process from the beginning to the end, anything from 28 to 32 lbs. of glucose can be produced from a bushel of corn.

Q. What proportion of saccharine is there in that 32 pounds? There is something besides saccharine in —, is there not?

A. Yes, sir.

Q. You understand there is a certain amount of saccharine in corn?

A. I never determined it.

Q. A certain percentage must be in corn?

A. I don't know; I could not answer that intelligently.

Q. In the process known as the dry process what proportion of the contents put in the converter did you convert?

A. I suppose you put in 56 lbs. a bushel, as meal.

Q. What proportion of that 56 lbs. is converted into the saccharine matter—starch is one?

A. Yes.

Q. What remains of the other?

A. It remains in there.

Q. What becomes of it after you take it out?

A. There are 100 different ways.

Q. What becomes of the mass converted?

A. It goes into the neutralizer; it is neutralized.

Q. After the good are neutralized what becomes of them?

A. They are filtered.

Q. What do you get then?

A. A certain amount of liquor and a certain amount of refuse if you use a filter press.

210 Q. The liquor is then what you term sweet water?

A. No; we call it light liquor.

Q. You stated before a perfect conversion could not be made?

A. I did.

Q. The reason was on account of this nitrogehous substance contained therein. Does that convert in the starch process?

A. We eliminate that in the manufacture of starch.

Q. You don't put it in the converter?

A. No.

Q. If it was put in the converter it would not convert?

A. No; it would remain there under the same conditions as in the dry process.

Q. Why cannot the saccharine be converted with that in?

A. I do not say that it could not.

Q. Why cannot a proper conversion be made with that being present when it is put into the converter?

A. Because there is too much nitrogenous matter present which interferes so greatly that the perfect conversion of the starchy matter cannot be effected; also, that all known mechanisms are deficient. This nitrogenous matter of itself being an unconvertible matter, I do not see how it can be otherwise than a retard in the operation of conversion.

Q. What is it makes a conversion?

A. Several things.

Q. Take it in the dry process.

A. Acid process?

Q. Yes.

A. Acids and steam.

Q. In case this nitrogenous matter being present would not a complete conversion be realized by simply adding more acid?

211 A. No, sir. I said before it was impossible to convert this nitrogenous matter.

Q. Does the acid act upon the nitrogenous matter or on the starch?

A. Acts principally on the starch.

Q. Is this nitrogenous matter susceptible to this acid; does it take it up consuming it?

A. No, sir; it does not. I do not understand you exactly. The trouble arises *the* the glutenous matter is all intermingled in the starchy matter in the grain, as every one that is practical in the business well knows. When you put this entire mass into the converter and attempt to convert it with acid, although the acid has its common effect to a certain extent on the starchy matter present it, at the same time, is interfered with by the other substances in that the acid is reduced in power or is consumed, but it acts as a dissolver upon this mass, so that after conversion it is very apparent to any one who understands what a perfect conversion is that he has not obtained the result that he is after.

Q. What would prove that?

A. The further operations in the business and the simple test with iodine.

Q. The iodine simply acts on starch?

A. Not entirely.

Q. How can you state the conversion is improper?

A. By the way in which the liquor taken from the converter discolors the iodine.

Q. No other way?

A. Not with iodine.

Q. Aside from the iodine?

A. In the further operations of the business the converted mass when properly converted gives very much less trouble that

212 it — when improperly converted.

Q. Trouble in what respect?

A. Trouble in the first filtration; trouble where boneblack is used for filtering in the operation of concentration.

Q. How does the boneblack make any difference as to the filter; how long will it take to filter through boneblack?

A. The difficulty shows itself in this way on the same principle that the purer the material is the less the expense of handling it by any method of refinement.

Q. Then you consider that if expense was applied the goods could not be purified?

A. No, sir; not to a commercial success in the dry process.

Further cross-examination by Mr. GREEN:

Q. Do you know this plaintiff?

A. I do not.

Q. Do you know the defendant?

A. No, sir.

Q. Did you ever have any correspondence with the defendant?

A. No, sir; I do not know who he is. I have been told there is a man by the name of Olmstead.

Q. You nor your companies have no business relations with him in any manner, shape, or form?

A. No, sir; not in any manner or shape.

Q. Have you ever made any goods yourself by the dry process?

A. I have.

Q. To any great extent?

A. Yes; to my sorrow.

Q. How many different patents have been submitted to you which you have investigated in this dry process, as near as you can now recollect them?

A. Ten or twelve, I should think.

Q. Do you know anything about this plaintiff's process?

A. I do not.

213 Q. Do you know anything about his machinery?

A. No.

Q. You have never investigated it in any manner or shape?

A. No, sir; I don't know of my own knowledge anything about it.

Q. You don't know, then, what the process of the plaintiff is?

A. I only know what has been said here this afternoon. I think I have a pretty good idea now.

Q. You don't know of your own knowledge what his process is?

A. I do not.

Q. Do you know that the plaintiff has a process for the manufacture of this article?

A. Yes. It is my recollection that we were applied to by either the gentleman or some interested party about a year ago, perhaps, or two years ago, through Mr. Holloway. We have a broker in Detroit named George Holloway, where I understand this gentleman lives.

Q. Is the machinery in any of your manufactories adapted to any dry process?

A. In part very largely.

Q. The machinery is not the same for both processes, is it?

A. The requisite machinery for handling the product after conversion is substantially the same, I suppose.

Q. What would you say would be the effect upon goods by this dry process heated by steam 70 or 80 degrees during the winter and situate in the same room during the summer exposed to all kinds of summer weather upon any goods manufactured by this dry process?

—. It depends entirely upon the condition of the manufacture of the goods and the state in which they were when put into
214 this room, the percentage of water, the percentage of saccharine matter, and so on.

Q. What would you say; could goods be manufactured or had

been manufactured by this dry process without fermentation or congealing where such goods averaged 32 to 35 lbs. a bushel of corn at a density of 35 Baumé?

A. I should not say that I did not believe it. Anyway, I don't consider that that is any test, commercially speaking.

Q. Why is it not a test, commercially speaking?

A. Because, commercially speaking, the goods are subject to entirely different circumstances through transportation through the country and being packed into different styles of packages than they are in being kept in a room where the temperature is within a few degrees of the same thing and kept in a bottle, corked or uncorked, as the case may be, especially if they were corked up tight, so that no gas or air could get to it. I don't think there is any comparison whatever. I never have known of goods manufactured on the dry process that would stand the slightest kind of test, commercially speaking.

Q. How is it as to goods manufactured by the wet process?

A. Where the manipulation is imperfectly done there is liability to ferment and congeal in goods made on the wet process, but where the manipulation is carried on properly there is very little liability to any fermentation or congealing except in the case of some accident; for instance, in the thousands and thousands of barrels that we have shipped in the last two years I think we have had something like 300 barrels that have fermented, and our experience shows us that this fermentation was caused by those particular barrels passing through extraordinary circumstances, such as being rained upon or some accident of that kind.

Q. Will the product manufactured by the wet process keep in proper shape longer by standing in a cooler than by being
215 transported or carried about?

A. Yes, sir; ordinarily, although I have known where syrups have been manufactured and shipped long distances have kept for years in their natural condition. If this were not true the business would not be successful.

Q. Where there has been a proper conversion by the dry process you say that the product would hold its own after being manufactured?

A. No, sir; I did not say that.

Q. Will you say that?

A. No, sir; I will not.

Q. You said that the only trouble with the dry process is that it is impossible to get a proper conversion.

A. I said that that was one of the greatest difficulties.

Q. Why, if there has been a proper conversio*b*, would not goods manufactured by the dry process remain in proper shape or condition?

A. I cannot answer that question any other way than I have before, viz., that I don't believe it is possible to produce, under any circumstances or by any means whatsoever, a product where you treat under the dry system that is a commercial success and would continue to be so.

Redirect examination:

Q. In your judgment the business of manufacturing glucose syrups and grape sugar cannot be successfully carried on by means of what is known as the dry process?

Objected to by plaintiff's counsel as incompetent and irrelevant.

A. That is my judgment and my experience.

HARRY HAMLIN.

Subscribed and sworn to before me on the day, at the place, and between the hours mentioned in the annexed notice.

WILLIAM JOHNSON,
Notary Public in & for Erie Co., N. Y.

216 UNITED STATES OF AMERICA, }
Northern District of New York, } ss:

I, William Johnson, a notary public in and for the county of Erie, in the State of New York, duly commissioned, qualified, and acting as such under and by virtue of the several acts of Congress authorizing and regulating the taking of depositions *de bene esse* in civil causes depending in the circuit and district courts of the United States, do hereby certify that the witness whose deposition is above set forth is material and necessary to the proper determination of the said cause in the caption set forth and described, and that the said witness is a resident of the city of Buffalo, in the county of Erie and State of New York, the same being at a greater distance than one hundred miles from Kansas City; and I further certify that I was attended at the law office of Bowen, Rogers & Locke, at number 28 Erie street, in the city of Buffalo, in the county of Erie and State of New York aforesaid, by Jacob Michels, the plaintiff in said action, and by his attorneys, Goodwin Brown and Manly C. Green, and also by Charles B. Wheeler, of counsel for defendant, and the witness, to wit, Harry Hamilin, who was of sound mind and lawful age, and by me sworn and examined and his examination by me reduced to writing and subscribed by him in my presence on the day, between the hours, and at the place in that behalf first aforesaid. I do further certify that I am not of counsel nor attorney for either of the parties to the suit in controversy or in any way interested in the event of said suit.

In testimony whereof I have hereunto set my hand and official seal this twelfth day of October, A. D. one thousand eight hundred and eighty-two.

[SEAL.] WM. JOHNSON,
Notary Public in & for the County of Erie, New York.

217 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

JACOB MICHAELS, Plaintiff,
against
GEORGE P. OLMSTEAD, Defendant.

Testimony of E. J. Eaton, J. M. Nave, and Peter E. Ridenour, given on the trial of this cause at the October term of said court, 1882, on the 30th day of October of said year.

Dr. E. J. EATON, called as a witness on the part of the defendant, being duly sworn, testified as follows:

Direct examination.

By Mr. PEAKE:

Q. What is your business?

A. Physician.

Q. How long have you been practicing medicine?

A. Well, since I commenced to practice, about 16 years; between 15 and 16 years.

Q. Are you also an analytical chemist?

A. I have done some work of that kind; yes, sir.

Q. I will get you to state if you analyzed some syrup that was given you by Mr. Olmstead a short time ago.

A. I made a partial analysis.

Q. Just state to what extent you analyzed it and what you discovered.

A. I tested it first to see whether there were any acids—that is, free acid. I tested it for sulphate of lime and for the presence of magnesia, and I found the reaction to indicate all these present—sulphate of lime, sulphate of magnesia, and the acid which gave the reaction of the free acid from the changes. I should say it was sulphuric acid.

Q. Well, what quantity?

218 *Q.* I did not examine the quantities at all.

Q. Did you estimate the quantity of sulphate of lime?

A. No; I did not weigh anything. It was only what is known as a qualitative analysis. It was only for the purpose of discovering the impurities in glucose.

Q. I will get you to state, Dr., whether from the test which you made there was sufficient sulphuric acid and free acid and sulphate of lime to render the product deleterious to human health.

A. I think there was sulphate of lime enough to render it deleterious to health. The amount of sulphuric acid I cannot tell; neither can I tell whether it was free acid or the acid salt.

Q. State whether, from your knowledge of the human anatomy and from your knowledge derived from the analysis, whether the syrup, the compound mixture that you analyzed there, would be injurious to human health, in your judgment.

A. I think it would; that is my judgment.

Cross-examination.

By Mr. TICHENOR:

Q. What do you mean by making a partial analysis?
A. Well, we can make a qualitative analysis—that is, to ascertain what there is in the substance—or we can make a quan-tative analysis and ascertain how much there is in each ingredient.
Q. The last is the correct way to do it?
A. That depends on what you want.
Q. If you want to be certain of the substance?
A. You can be just as certain by qualitative as quantitative.
Q. You can be certain whether there is any acid or not and how much of it?
A. Yes, sir; in this manner you don't find out the quantity In this case I did not weigh anything whatever.
Q. What is the sulphate of lime you speak of here?
A. To understand it—in common parlance it is known as
219 sulphuric acid and lime; gypsum and plaster Paris is the common name for it.
Q. You don't know from where this syrup was brought, do you?
A. No, sir; I don't know as I do.

Redirect examination.

By Mr. PEAKE:

Q. It was the syrup that was handed you by Mr. Olmstead that you analyzed?
A. Yes, sir.

Recross-examination.

By Mr. TICHENOR:

Q. You don't know where he got it nor what he had put in it?
A. No, sir.

J. M. NAVE, called as a witness on the part of the defendant, being duly sworn, testified as follows:

Direct examination.

By Mr. PEAK:

Q. Are you engaged in the grocery business in Kansas City?
A. Yes, sir.
Q. How long have you been so engaged in the business?
A. About 18 years.
Q. Do you handle syrups and molasses?
A. Yes, sir.
Q. I will get you to examine this sample (handing witness a sample of syrup) and give your opinion whether it is a merchantable quality.
A. From the appearance of it I would not call it a syrup at all, this.

220 Q. This in that bottle? Taste it if you choose.

A. I would rather not taste it. There is a smell to it that indicates that. The appearance indicates it has some cane sugar mixed with it—cane sugar or syrup. It smells very perceptibly to me; but the goods—the syrup—from the appearance is not merchantable goods.

Q. To what extent have you been a dealer in groceries and syrups? Are you in the retail or wholesale business?

A. Wholesale.

Q. What company are you manager of?

A. Of the McCord & Nave Mercantile Company.

Q. Here in Kansas City?

A. Yes, sir.

Q. It was formerly McCord, Nave and Company?

A. It is a corporation now.

Cross-examination.

By Mr. TICHENOR:

Q. You don't know anything about the manufacture of syrup by the dry or wet process?

A. No, sir.

Q. You don't pretend to say it cannot be made merchantable by either one or the other or both of them. You are testifying simply about that sample?

A. Certainly.

Q. You are not testifying as to what can be done by the dry or wet process?

A. No, sir; I don't know anything about it—the details of the manufacturing.

Q. You never deal in any goods manufactured by the dry process?

A. I don't know.

By the COURT:

Q. Have you by the wet process?

221 A. I am not familiar with the details of the manufacture.

By the COURT:

Q. Dry or wet?

A. No, sir.

By TICHENOR:

Q. Is it not a fact that this grape sugar enters into the composition of nearly all sugars in the market now?

A. No, sir; it is not.

Q. Is it not a fact that a great many sugars are mixed with it?

A. It is a fact that quite a large quantity of powdered grape sugar is mixed with pure cane sugar; not so large a proportion as your question implies.

Q. Is it not largely used in the manufacture of sugar?

A. No, sir; grape sugar is only used to a limited amount.

Q. How is it with syrups—don't glucose enter into the manufacture?

A. You mean corn glucose?

Q. Yes, sir.

A. Yes, sir—that is, corn glucose is mixed with cane syrup.

PETER D. RIDENOUR, called as a witness on the part of the defendant, being duly sworn, testified as follows:

Direct examination.

By Mr. PEAKE:

Q. In what business are you engaged?

A. In grocery business.

Q. Wholesale or retail?

A. Wholesale.

222 Q. What is the name of your firm?

A. Ridenour, Baker & Co.

Q. How long have you been engaged in that business?

A. Our firm or myself? The firm, four years.

Q. How long have you been engaged in the business?

A. About 32 years.

Q. About 32 years?

A. Yes, sir.

Q. Is it a part of your business to handle syrups, molasses, and glucose?

A. Yes, sir.

Q. Examine that sample there, Mr. Ridenour (handing witness bottle of syrup), and give your opinion as to whether that is merchantable quality of syrup of any kind.

A. I should judge not from the appearance of it. It don't look like syrup. I would not call that merchantable syrup.

Cross-examination.

By Mr. TICHENOR:

Q. Is it not a fact that this grape sugar entered into the composition of sugars that are sold in the market?

A. It does to some extent.

Q. How many manufacturers are there that don't use it? How many processes are there?

A. How many processes or how many refineries? The different refineries have different processes.

Q. How is it with the most of sugars, don't they contain grape sugars?

A. I think not.

Q. Is it quite largely used?

A. No; I don't think it is. I think it is comparatively small.

Q. How is it with syrups?

A. The larger part of the syrup used in this part of the country is mixed with corn goods and cane goods.

223 Redirect examination.

By Mr. PEAKE:

Q. Do you know, Mr. Ridenour, of your own knowledge whether these kind of goods are made by the wet or the dry process?

A. No, sir; I don't know anything about the dry process.

224 My name is L. R. MOORE; residence, Kansas City, Missouri, and engaged in merchandise.

About 1881 or 1882 I was interested in a stock company for the purpose of erecting a building and buying machinery for making glucose, which was called then the dry process. This building was located in Kansas City, Mo. As near as I can state now, there was nearly $250,000 in the building and machinery, which had been expended for the manufacture of glucose by this process. Mr. Rogers was the expert why was to manufacture the syrup after the building and machinery were completed, and he also superintended the purchase of the machinery and putting it in. Rogers reported to me that they had made eight hundred gallons. I asked him for a sample of it and he stated that through some mistake the valve was left open in the bottom of the tank and the syrup all ran out in the sewer. I asked him if he could not get as much as a small vial full of it. He said he could not and did not furnish it. This was the last trial that I know of. I was fully satisfied that the process was a complete failure. We and the parties had a meeting in Rochester after that and went over the situation and, being fully satisfied that the making of glucose by the dry process was a failure, and in order that we might do all we could for the stockholders, we organized a new company to make glucose by what was known as the old or wet process. After putting the necessary machinery at a cost of about $150,000.00 it was then found that it was not profitable to manufacture by the wet process on account of the high price of grain and the reduction of duty on sugar. Having exended more money than the company had by a large amount, it was abandoned and sold out under mortgage. Having expended about $250,000.00 for the manufacture of syrup by the dry process, we satisfied ourselves that the dry process was a failure and abandoned the enterprise. I do not know of any manufactory in the world today that manufactures glucose by the dry process. Mr. Rogers, who was superintendent of our works and who was to be the expert, stated to me that
225 he was the same man who was to be superintendent of the works contemplated by Mr. Olmstead and his company. Mr. Stebbins was employed by us as Rogers' assistant in putting in machinery and manufacturing.

Cross-examined.

By Mr. TICHENOR:

Q. Are you an expert in the manufacture of glucose?

A. I am not.

Q. Could you manufacture it either by the wet or the dry process yourself?

A. No, sir; I have never had any experience except in making sugar out of sugar cain.

Q. You speak about parties at Rochester; were there not some parties interested in your company here who were interested in glucose there?

A. If there were I never knew it.

Q. How much glucose did you manufacture by the wet process?

A. I do not know, sir; only enough to try the machine.

Q. So you manufactured as much glucose by one process as by the other?

A. I suppose we did; I do not know.

Q. How did you satisfy yourself that the manufacture by the new process was a failure?

A. By the parties that put in the machinery; that was an acknowledgment by them and they gave it up and went off and left it.

Q. So, then, your knowledge in reference to this matter consists in what other people said about it?

A. It consisted in what other people said about it; and they had a small machine and made some of the syrup, but the syrup to me was not satisfactory, as it was full of grease; they gave as an excuse for *the* that when they got their large machine it would be all right.

226 Q. What was this small machine—what was the purpose of it?

A. It was a test machine.

L. R. MOORE.

Subscribed and sworn to before me this 10th day of May, 1888. My term expires Febr'y 25th, 1890.

[SEAL.] ROBERT E. BALL,
Notary Public, Jackson Co., Mo.

227 —— STEBBINS, being duly sworn in behalf of the plaintiff, testified in rebuttal of defendant's testimony as follows:

Direct examination.

By C. O. TICHENOR, Esq.:

Q. What is your full name?

A. Edward F. Stebbins.

Q. Where do you live now?

A. Kansas City.

Q. Where did you live before you came to Kansas City?

A. Detroit, Michigan.

Q. While you were at Detroit in what business were you engaged?

A. The last ten months that I was in Detroit I was engaged as Mr. Michels' book-keeper.

Q. Before that time in what business were you engaged in?

A. About six months before that I was not engaged in any busi-

ness, for, I think, ten months prior to that I was manufacturing vinegar; and before that I was in a tobacco-house, and before that in vinegar works for about three years.

Q. What are you doing now in Kansas City?

A. At the present I am in the employ of the Rochester Grape Sugar Company.

Q. This company here in the East Bottom?

A. Yes, sir.

Q. By what process is the machinery gotten up to manufacture by?

A. It is gotten up for the purpose of manufacturing glucose by the dry process.

Q. That is the process that is in controversy in this contract?

A. Yes, sir.

228 Q. What is the capacity of this house?

A. This house was built with the intention of manufacturing three thousand bushels a day.

Q. That is its capacity?

A. Yes, sir.

Q. Has it been started yet?

A. No, sir. We have not commenced manufacturing yet; we are going to start as soon as possible.

Q. Do you know the reason why it has not been started before?

A. The reason given me by the company was that by the time the works were completed corn was so high that it was deemed by them not advisable to start before fall.

Q. Were you present there, in Detroit, at the time this contract was signed?

A. I was there, in Detroit.

Q. I mean, were you present?

A. I was not in the room.

Q. It is in testimony that this schedule annexed here is in your handwriting.

A. That is a fact. I made a copy of that schedule; I presume it is the same.

Q. When did you see Mr. Olmstead first?

A. I met Mr. Olmstead first——

Q. What day of the week was it?

A. Wednesday morning, the 2nd day of March, I think.

Q. You may state, if you please, what you know about this matter, what was said to you, and what you heard.

A. The first I knew of this arrangement at all was while Mr. Michels and Mr. Rogers were in Rochester. I was at home that day attending to business. I think, then, either a telegram or letter, I am not sure which, came from Mr. Harris asking for prices—asking what we would charge to put up a one-thousand-bushel house to manufacture these goods in Kansas City. I am not certain

229 whether it was a letter or a telegram. I forwarded it to Mr. Michels, at Rochester, and, as I understand, it was answered from there. We afterwards received a letter from Mr. Harris, asking if he brought a party from Kansas City to make a contract if

we would show the process. This was also, I suppose, answered by Mr. Michels. I did not make any reply to any of these. This must have been the latter part of February. I think it was on the second day of March, Wednesday morning or Tuesday forenoon, that I received a letter from Mr. Harris to meet him at the train. I went down to the train to meet him. They did not come in; they came in the next morning. I believe they had been delayed on the road. They did not get in on the train they expected to; they came to the office. We were in the office—Mr. Michels, Mr. Rogers, and myself—and at that time negotiations were made for erecting a factory here.

Q. How long was it after Mr. Olmstead got there, in Detroit, before that contract was signed?

A. He arrived on Wednesday morning and the contract was signed Saturday night of the same week.

Q. During that time what was Mr. Olmstead doing?

A. Mr. Olmstead was there, in and out every day. I should say he was in there, possibly, half the time; perhaps more; not all the time.

Q. Do you know when that contract was drawn up?

A. The contract was written Saturday afternoon.

Q. Saturday afternoon? Do you know by whom?

A. By Mr. Rogers.

Q. Did you ever hear Olmstead say anything about that contract before it was signed?

A. Yes, sir.

Q. What?

A. The day that they arrived, Wednesday or Wednesday night, I said to Mr. Harris that we had established a rule among ourselves that we would not allow anybody to see the process—
230 the manufac- of these goods—until somebody was bound to build a sugar-house, for the reason that we did not propose to give this thing away until we had got into shape that we could get something out of it. Mr. Harris told me that Mr. Olmstead understood that. After that several times during the week, I cannot tell what days it was, this was spoken of. It was thoroughly understood that the contract was to be signed before we would make the goods. This was spoken of to Mr. Olmstead and Mr. Michels—all of them. It was talked over there generally.

Q. Do you know whether before this contract was executed by Olmstead, whether or not he knew it was being drawn up?

A. I think he did. I am quite positive of it, because he was in the office Saturday forenoon and asked the question whether the contract was ready.

Q. Asked the question whether the contract was ready or not?

A. Yes, sir.

Q. Did you take any part in the experiment there?

A. Yes, sir.

Q. What part did you take?

A. I did the principal part of the work in the manufacture of the

goods, made the conversions, and boiled the goods down after they were converted.

Q. Can you make these goods?

A. I think I can.

Q. Do you not know you can?

A. Yes, sir; I know I can.

Q. You may state, if you know, whether or not a merchantable article of syrup can be made by the dry process?

A. Yes, sir.

Q. Have you made any here?

A. Well, we have made some experiments here. Made
231 some samples, one of which I have with me. We had not proper facilities for making it. I wish to explain to the gentlemen if they attempt to taste it they will taste the bitter oil, for the reason that one of the vacuum pans leaked. When we pumped (could not understand the balance of ans.—Rep.).

Q. Is that made by the dry process?

A. It is and with very improper facilities for making it.

Q. When was it made?

A. On the 12th day of July, I think.

Q. Here in Kansas City?

A. Yes, sir.

Q. What was the object of that test which you made at the time that Mr. Olmstead was there in Detroit?

A. The object of making that test—making these goods—was to show Mr. Olmstead that we could manufacture from fifty pounds of corn meal, which is generally considered a bushel of corn, thirty-two pounds of syrup, but at the same time it was distinctly understood by all the parties that we were not going to work for quality but for quantity, and to show that the goods could be made. We were not guaranteeing fine goods.

Q. Do you agree with the witness just on the stand as to what was the matter with the sample there before you, about its being solid?

A. Yes, sir; there is a certain amount of sugar in the bottom?

Q. Do you know why it is—what is the cause of the syrup turning to sugar?

A. There are several causes why it turned in the process of the manufacture. If I were to go into the details of it I might possibly give away some things that we do not care to make public now. I think probably that this sample in the conversion was carried a little too far.

232 Q. Conversation carried a little too far?

A. Yes, sir.

Q. Do you know the costs of these works here in Kansas City?

A. No, sir.

Cross-examination

By JOHN C. GAGE, Esq.:

Q. You say you are engaged with this Rochester works here?
A. Yes, sir.
Q. How long since those works have been finished?
A. Well, the works are not entirely complete now.
Q. How long since they were practically finished?
A. About the first of May, '82.
Q. How long since they started up?
A. They started running machinery?
Q. Yes, sir.
A. If I remember right a week ago last Thursday.
Q. You stated that the reason, the only reason that they did not start before was the high price of corn?
A. That is the only reason I know of.
Q. The only reason you have ever given to anybody?
A. Yes, sir.
Q. In any letter or in anything that you have said it is the only reason?
A. As far as I know.
Q. You don't know of any other reason?
A. No, sir.
Q. You don't know whether there has been a big discussion in the company whether they would turn them into the wet process?
A. I have heard it talked of—not by the company. I have heard it talked outside.
Q. Who do you mean by the outside?
A. Well, I have heard of people here in Kansas City say that the machinery was to be changed.
233 Q. Into what?
A. Changed from the dry to the wet process, but not any member of the company.
Q. Who is your company?
A. The company is composed principally of Rochester people.
Q. There were some people here in Kansas City who were interested in it a while ago, were there not?
A. Yes, sir; there were
Q. And there were a good many here that were interested that are not interested now, was there not?
A. I suppose so. I know very little about the stock.
Q. You never did know anything about it?
A. Not much.
Q. You did not understand pretty well some time ago the secrets of that establishment?
A. I know nothing about it. It was never known where the stock was.
Q. You never undertook to tell anybody about the stock?
A. I cannot tell what I may have said.
Q. You say now there has been a discussion as to whether they

would turn them into the wet process, the works without starting first the dry process?

A. By parties in Kansas City?

Q. Yes, sir.

A. Yes, sir. I have heard it talked of.

Q. You know the works did not go to work for several months and they have started now as an experiment?

A. I cannot say that they have.

Q. You don't undertake to say that they can make any goods that is fit for use?

A. Yes, sir.

Q. Do you undertake to say that this article that you took
234 out of your pocket is?

A. This was made on a little experimental work. Simply a converter and a vacuum pan.

Q. Have you got your works started up there?

A. No, sir; not for the manufacture of goods.

Q. What are you doing?

A. Simply fixing up the machinery—getting ready to start; as I said before, the works are not entirely complete.

Q. What has been done there for the last few months—you say they were practically finished last May?

A. Mr. Rogers came there; there has been two of us left in charge of the building. We have been there every day.

Q. You have not been getting ready to go on with the dry process?

A. No, sir; only just what work was absolutely necessary to keep the machinery in order.

Q. You have been here since last September?

A. Yes, sir.

Q. During that time the Kansas City stockholders have very generally sold out?

A. I cannot say anything about that.

Q. You don't know anything about that?

A. No, sir.

Q. You say that a good article of syrup can be made from corn by the dry process?

A. Yes, sir.

Q. Who is the man that made it?

A. Who is the man that made it?

Q. Yes, sir.

A. We found one man here in our employ, Mr. Ridout.

Q. Did Mr. Rogers ever make any to your knowledge, or Mr. Michels or yourself?

235 A. I don't know that they made any for sale.

Q. Have they ever made any, a good article?

A. It is hard for me to say what they may have done. I never say any that I would say was a first-class, merchantable article that they made, except, possibly, a sample that Mr. Rogers had, which he says he made and I presume he did.

Q. Up to the 13th of June, 1880, you never had seen any that Rogers had made?

A. No, sir; I never seen any that I would say was a first class, merchantable article.

Q. On the 13th of June, 1881, you don't believe that Rogers could make an article fit for sale?

A. Well, at that time I don't.

Q. You don't believe that Rogers knew how to make it?

A. I don't think he was thoroughly posted in the manufacture of these goods to make good, merchantable goods.

Q. You knew that he said he could?

A. I knew that he had said he could.

Q. You know that he never showed you any of it?

A. I presume I had seen all he had attempted to make.

Q. And you did not consider that fit for sale?

A. No, sir; for the simple reason that it was made without proper facilities.

Q. Did you not believe at that time, Mr. Stebbins, that he did not know how to make an article that was fit for sale on the 13th of June?

A. Yes, sir; I believe I did.

Q. You believed at that time that you thought that Rodgers did not know how to make it fit for sale?

A. Yes, sir.

Q. That was long after this contract was made?

A. Yes, sir; the contract was made in March—that would
236 be three months.

Q. Is Mr. Michels a syrup-maker?

A. Mr. Michels understands how those goods are made.

Q. Has he ever had any experience in it?

A. No further than our experiments; that is as far as I know. I am speaking now of my knowledge.

Q. But, as far as you know, he had never been engaged in it except in the experiments you and he and Rogers had been engaged in at Detroit?

A. No, sir.

Q. Those experiments, as far as you know, had not taught Rogers to make syrup that was fit for sale?

A. I don't think it had.

Q. You say that Mr. Rideout has an article that he says was made by the dry process that you consider a good article?

A. Sir?

Q. You say that a man by the name of Rideout has shown you a sample of syrup that he says he made from corn by the dry process and that you consider a good article?

A. Yes, sir.

Q. Who is Mr. Rideout?

A. Mr. Rideout is at present engaged in the Rochester grape-sugar works.

Q. In this city?

A. Yes, sir.

Q. Where did he come from?
A. He came from Canada.
Q. What place?
A. Walkerville. He was engaged at Walkerville.
Q. In what works?
A. Sugar works.
Q. What is the name of it?
A. Dominion sugar works.
237 Q. Was he not engaged in the Windsor sugar works?
A. I don't think—— (Could not hear balance of answer.)
Q. What kind of works are those?
A. Dry process.
Q. What kind are they now?
A. At present they are running by the starch process.
Q. That is the wet process?
A. Yes, sir.
Q. When he went away from there they immediately went to work and changed their works into the wet process?
A. No, sir.
Q. Have they been since?
A. Yes, sir.
Q. How long has he been here?
A. He has been here in Kansas City, I think, since a year ago in September; I think about a year.
Q. What was the interest that you and Michels and Rogers had in this process which you had at Detroit at the time Olmstead came there?
A. At the time of signing the contract we had no special arrangement. There was a sort of an understanding between myself, Michels, and Rogers that if we could organize a company for the erection of these works that Mr. Rogers and myself were to have a percentage of the profits.
Q. What profits?
A. Profits of the machinery and also a share in whatever stock we might get in the concern, but up to that time there had been no definite arrangement made—whatever stock we might get in the concern.
Q. What share of the stock in this concern was you to take?
A. If he signed this contract there was some talk as to what percentage.
238 Q. The share of stock?
A. I understand I am getting at that. This is the only way I can get at it. This was, I think, on Wednesday night following the signing of this contract that we had this talk as to what percentage we were to get on the profits of this job. I then put in a proposition to Mr. Michels to allow me a certain percentage, to which he objected. He said I had got my figures too high. He said he had his ideas placed on exactly one-half of what I offered to take. I at the time asked for twenty-five per cent. He then offered to compromise on the basis of (either fifteen or eighteen per

cent.—REP.) That proposition I never accepted, and there the matter has rested and is resting at this time.

Q. That is not stock?

A. The profits of this contract. $20,000, I think I have shown, was to be taken in stock.

Q. $20,000 to be taken in stock in what?

A. In these works we contemplated building.

Q. Here?

A. Here.

Q. Then, at the time this contract was made you and Rogers and Michels contemplated joining in the erection of these works to the extent of $20,000?

A. Mr. Michels was to erect these works.

Q. You was to have stock, you say?

A. After the work was all finished we were to receive a certain amount of money; at least, Mr. Michels was to receive. I say we because we were all there together. Mr. Michels was to receive fifteen per cent. for the machinery received in Kansas City. He was to receive fifty per cent., according to the schedule that is furnished. The balance, thirty-five per cent., was to be left altogether until the completion of the works and the goods were produced according to his guarantee. Then whatever profits there was on this account, if it was over $20,000 anywhere, he was to have
239 *have* in cash. As I understood our arrangement, Mr. Rogers was to have a certain percentage out of the cash and the stock and I was to have a certain per cent. and Mr. Rogers the balance.

Q. I ask you stock in what?

A. Stock in these works which he was contemplating building.

Q. It was contemplated, then, that there should be a stock company; that you were to erect some works in Kansas City? That was the understanding; that is what you talked about after this contract had been signed and Olmstead gone away—the next Wednesday night after he went away?

A. We expected there would be a stock raised; yes, sir.

Q. And the arrangement was that there was to be $20,000 of that stock to belong, some portion, to Rogers and Michels and youself?

A. Yes, sir; according to whatever percentage we could agree upon.

Q. And that was the matter you discussed?

A. Yes, sir.

Q. Now, where did Mr. Michels and Mr. Rogers and yourself conceive the idea that there was going to be a stock company raised in Kansas City?

A. Mr. Olmstead—Mr. Olmstead claimed when he came there he could raise a stock company.

Q. To raise a stock company or to represent a stock company?

A. He said he came to represent certain parties who were contemplating organizing glucose works.

Q. When you had made this contract Olmstead had gone away. On the Wednesday night following you and Michels and Rogers

were discussing how the $20,000 of stock in the company was to be divided?

A. Our proportion.

240 Q. And it was to be decided among yourselves what was to be your several proportions?

A. Yes, sir.

Q. Then you knew perfectly well that Mr. Olmstead's negotiations were in behalf of a stock company to be formed in Kansas City?

A. As I understood it, his negotiations were in behalf of these parties here in Kansas City who were contemplating organizing this stock company; that is what he came there to investigate, for them and for himself.

Q. And to come back and report to them?

A. To come back and report to them.

Q. You exhibited your process to him with a view of enabling him to make that report?

A. Certainly.

Q. That was part of the object of his visit there to witness the actual making of this syrup?

A. Yes, sir.

Q. So as to be able to certify to his friends here that he had seen it done and thus facilitate him and this company. Now, when did you first hear it stated or to whom and by whom was the suggestion first made that the process could not be seen unless a contract was signed?

A. As far as I am personally concerned I made this statement to Mr. Harris at several times during the week. Before this contract was drawn up that matter was talked of in the presence of Mr. Olmstead and all the parties concerned.

Q. Just give us the conversation in which that matter was talked of by Mr. Olmstead and all the parties concerned; just give me what actually passed, the actual talk.

A. That I cannot possibly do. I cannot remember the exact conversation when he was present.

241 Q. Nor what was said?

A. I know that the matter was talked of generally.

Q. What was talked of generally?

A. I remember the regulation we laid down, the rule that we would not allow this process to be seen until a contract was signed binding somebody to build a sugar-house.

Q. You say you had already told Harris this?

A. Yes, sir.

Q. What day did you talk to Olmstead about this or to anybody else?

A. I don't believe that I can give an explicit date; I think, I presume, Thursday or Friday.

Q. What did you say, what did he say, what did each of you say, or anybody else say?

A. I cannot tell exactly what was said. I know the matter was generally talked about.

A. Yes, sir.
Q. And costs less for the machinery?
A. Yes, sir.
Q. The machinery for the wet process is very costly, is it?
A. Yes, sir.
Q. Very expensive in comparison to this?
A. Yes, sir; there is more about it; more in it. As far as the machinery is concerned itself the machinery we had——
Q. But then it requires more machinery to make it?
A. Yes, sir.

245 Q. Was anything said at that time about the extent to which this secret was to be permitted to be used by other parties?

A. That was a point on which I am not posted. If there was talk of that kind at that time it was had between Olmstead and other parties.
Q. Do you know to what extent it was proposed to use it?
A. No, sir.
Q. Do you know anything about there being three concerns to be allowed to use it?
A. I heard something about that.
Q. With a limit of eighteen thousand bushels a day?
A. I heard some talk since. I did not know it at the time.
Q. You know of the propostition that it was proposed to permit the erection of works in other places similar to this?
A. Yes, sir.
Q. One or two other places?
A. Yes, sir.
Q. Do you know whether in such proposition to erect works around at different places that it was proposed to make you a superintendent of one of them and Mr. Rogers of one of them?
A. It was a matter of just talk. It was contemplated sending me to Kansas City.
Q. You were to superintend and manage the works here after the erection?
A. Yes, sir.
Q. You were not to superintend the erection?
A. No, sir.
Q. Where was Rodgers to go when other works were erected?
A. It was undecided.
Q. He was to go to some other place?
A. It was our intention to erect works so that we could supply ourselves.

246 Q. So that each of you could have the supervision of the works?

A. Yes, sir.
Q. If you were to have superintendencies, what was that contract made for?
A. It was made to bind somebody to build a sugar-house.
Q. What was it made for? What was the occasion for it? You

were interested in the contract yourself; now, just tell the jury what that contract was made for, if you know.

A. What it was made for?

Q. Yes, sir.

A. That contract was made with Mr. Olmstead with the distinct understanding that provided he could raise a company in Kansas City to erect the works, could get the parties to join him in this enterprise and put in money, then this contract was to be turned over to the company, but if his friends would not join him, then Mr. Olmstead said decidedly that he would build the works himself.

Q. Two-thousand-bushel works—he would carry out that contract himself. He said that, did he?

A. He did not say he would carry out the contract to build the two-thousand-bushel works.

Q. But this is a contract for a two-thousand-bushel-house works?

A. I understand.

Q. And you say he agreed to carry out that contract if he did not get his friends to form a company?

A. With certain modifications, and the modifications of it were these: Provided his friends would not join him, he was to be ready to build a one-thousand-bushel house at the figures already given him.

Q. Then it was distinctly understood that Mr. Olmstead
247 should not carry out this contract as such; was that it?

A. No, sir; I don't — that was it.

Q. This contract for the two-thousand-bushel house?

A. Not distinctly understood that he should carry out this contract. He had the privilege of building this house if he chose to.

Q. He was not to be held to carry out this one?

A. With the modifications he was.

Q. What modifications?

A. With the modification that it was to be a one-thousand-bushel house.

Q. Did he not tell you there that he could not build a two-thousand-bushel house?

A. I think he said so.

Q. You heard him say that?

A. Yes, sir.

Q. Did he not say that he thought with what help he could get that he could build a one-thousand-bushel house?

A. He said he could build it with the help he could get or he could build it alone and would build it alone.

Q. There had been a talk about the terms on which a one-thousand-bushel house could be erected?

A. Yes, sir.

Q. And the understanding there was if he would sign this contract he could go in there and see that process, and that then he should not be bound to carry it out, carry out this contract, but another arrangement about a one-thousand-bushel house?

A. Not any special arrangement; this contract was to be the

same, with the exception that this two statement, which was to be changed into a one-thousand-bushel house, and the prices were made accordingly.

Q. He told you that he was not responsible and could not
248 be made responsible for a contract to build a two-thousand-bushel house.

A. No, sir; he never told me that.

Q. You had heard him say that he would not be made responsible for building a two-thousand — house?

A. Yes, sir.

Q. Where was this talk?

A. This talk was from Wednesday to Saturday night.

Q. This talk was from Wednesday to Saturday night—that he should build a two-thousand-bushel house? Harris and himself were present?

A. When we talked about that there was talk in regard to building this house. There was so much talk that Mr. Rogers and Mr. Michels done it; I had little to do with it. It was no arrangement made with me.

Q. You did not understand, did you, after he had gone away that the contemplated two-thousand-bushel house was to be erected by a stock company?

A. I cannot say that, either.

Q. And the Wednesday night after he had gone away you and Michels and Rogers debated how you would divide the $20,000.00 stock that you thought you would be entitled to?

A. We talked about—there was a dispute about——

Q. You could not agree?

A. Mr. Michels and I did not agree exactly.

Q. Look at that letter (showing witness letter). Who wrote that?

A. That is my handwriting.

Q. What name is signed to it?

A. J. Michels.

Q. At whose direction did you write that letter?

A. Mr. Michels'.

Q. And sent it to Mr. Olmstead? (Letter dated April 7th, '81.)

249 —. ——.

Q. Look at that letter and tell me in whose handwriting that is.

A. That, I would say, is Mr. Michels' handwriting.

Q. You know his handwriting?

A. Yes, sir.

Q. Directed to whom?

A. To George P. Olmstead. (Letter dated April 19th.)

Q. Whose is this letter? (Letter dated April 11th, '81.) Who is it directed to?

A. George P. Olmstead.

Q. Signed by whom?

A. By me.

Q. Written by whom?

A. By me.
Q. At whose direction?
A. At Mr. Michels'.
Q. Sent to whom?
A. To Mr. Olmstead.

250 In the Circuit Court of the United States for the Western Division of the Western District of Missouri, October Term, A. D. 1882.

JACOB MICHELS, Plaintiff,
vs.
GEORGE P. OLMSTEAD, Defendant.

Tichenor & Warner for plaintiff.
Peak, Yeager and Gage for defendant.

JACOB MICHELS, being duly sworn in his own behalf, testified as follows:

Direct examination.

By C. O. TICHENOR, Esq.:

Q. You are the plaintiff in this case?
A. Yes, sir.
Q. Where do you live?
A. Detroit, Michigan.
Q. How long have you lived in Detroit?
A. 13 years ago last May.
Q. Since 13 years ago last May?
A. Yes, sir.
Q. Do you live there still?
A. Yes, sir.
Q. What business are you engaged in in Detroit?
A. Machinery.
Q. What kind of machinery?
A. Various kinds.
Q. Give us something of an idea of the nature of your business.
A. Part of our business is in the manufacture of wood-work and some machinery for sugar manufacture.
Q. Various kinds of machinery?
A. Yes, sir; all kinds of machinery.
251 Q. How long have you been engaged in that kind of particular business?
A. I have been engaged in this particular business since I have been in Michigan. Previous to that I was engaged in the manufacture of machinery (something; could not hear what it was).
Q. So, then, you are a practical machinist, are you?
A. Yes, sir.
Q. Where was this contract signed by Mr. Olmstead and yourself?

A. In my office.
Q. At the date at which it purports to have been signed, the 5th of March, 1881?
A. Yes, sir.
Q. After signing that contract did you come to Kansas City?
A. Yes, sir.
Q. Where did the defendant live then and where does he live now?
A. The defendant lived at Kansas City at that time, I presume.
Q. You know he lives here, don't you?
A. Yes, sir.
Q. Has he ever furnished you a building?
A. No, sir.
Q. To put up this machinery in?
A. No, sir.
Q. Has he ever furnished you anything under this contract?
A. He has not.
Q. Did he ever pay you this 15 per cent.?
A. No, sir.
Q. Did you draw on him for it?
A. Yes, sir.
Q. Has he refused to live up to his contract?
A. He did.
252 Q. You say you came to Kansas City after this contract was executed. How long afterwards?
A. I was here on the 12th of March. I think it was the 12th or 13th of March.
Q. During all of this time have you been ready to go on with the work?
A. Yes, sir.
Q. State, if you please, how much, if you know, it would have cost to put up these works, in accordance with your contract here, at Kansas City.
A. We figured it to cost $60,000.
Q. $60,000?
A. Yes, sir.
Q. You could have put them up for that money?
A. That is what we figured it at.
Q. So there would have been a profit of about how much on the undertaking if carried out?
A. About $21,000.

Cross-examination.

By Mr. PEAKE:

Q. Will you please look at that exhibit (handing witness paper). Was not that presented at the same time the contract was signed? Was that schedule prepared at the same time that the contract was signed that you spoke of?
A. The schedule was prepared I find it was simply extended on the paper with a lead pencil. It was carried out in lead pencil

the day the contract was prepared. The figures giving the amount and the items as they are here.

Q. Is not that the schedule referred to in that contract?

A. Yes, sir; it is supposed to be.

Q. You say that you have been engaged for some time past in the manufacture of machinery?

A. Yes, sir.

253 Q. And that you are a practical machinist?

A. Yes, sir.

Q. There are five boilers put down here—60 by 16, 53 by 4. What are those boilers worth?

A. They vary very much in prices.

Q. Just state what the boilers as are described here are worth, the least cash price that they can be bought for.

A. Everything has a different price.

Q. For the same grade of boilers?

A. They vary very much, sir.

Q. Give us the price of the different manufactures.

A. At that time they varied all the way from ten to fourteen hundred dollars.

Q. Apiece?

A. Yes, sir.

Q. They varied all the way from ten to fourteen hundred dollars apiece?

A. Yes, sir.

Q. You might have bought boilers such as are mentioned here, 60 by 16, 4 tubes, for $100 each.

A. A poor boiler you could; yes, sir.

Q. You could have bought a number one boiler for fourteen hundred dollars?

A. About that; yes, sir.

Q. You could have bought boilers varying between one thousand and fourteen hundred dollars?

A. Yes, sir.

Q. There are four engines spoken of here, complete set of 16 x 24. What are such engines selling for—what were they worth at the time?

A. They varied again in price. Every manufacturer had

254 a different price set on his work.

Q. Let us know.

A. They varied all the way from fourteen hundred to twenty-four hundred dollars.

By the COURT: Each?

A. Yes, sir.

By PEAKE:

Q. I mean, now, Mr. Michels, what could you have bought such engines as are described here of the manufacturer; what could they have been bought for out there?

A. Bought at Detroit?

Q. At the manufacturers', in Detroit, Cincinnati, Buffalo, or Chitago?

A. They could probably have been bought for eighteen hundred dollars.

Q. At the factory?

A. Yes, sir.

Q. Here are twelve run of stone with fixtures complete. What kind of stone are they; what could they have been purchased for at the time?

A. I could not tell you, not being in my line of business. We had to buy those. Mr. Rogers put the figures on those.

Q. Don't you know what they were worth at that time?

A. No, sir; I have no idea. We had the lists of the parties that manufactured them.

Q. Eight bolting-chests complete; what were those worth at that time.

A. I could not tell you, sir.

Q. Had you examined into the prices of these articles before this schedule was made, Mr. Michels?

A. Yes, sir.

Q. You knew at that time what they were worth?

A. Yes, sir.

255 Q. You don't know now what they were worth?

A. No, sir.

Q. Main-line shafting that was to be used; do you know what that was worth?

A. Varied in prices according to size.

Q. Take the sizes that would have been used in this factory, that you proposed using.

A. If you could name any size there and would give me a price-list I could give you the prices.

Q. You proposed to erect a building here for the manufacture of glucose?

A. No, sir; we did not do anything of the kind.

Q. You proposed to furnish this machinery for the manufacture of glucose?

A. Yes, sir.

Q. You know what sort of machinery you would furnish; don't you know what sort of shafting would be needed for that?

A. Yes, sir. I have a good many things to figure and I am not able to carry all of these things in my mind. We have the prices as they were figured here.

Q. Main-line shafting, what was the amount of the shafting?

A. We figured the amount required for that business at $320. We figured on the amount required.

Q. Was that the cost, Mr. Michels, at the shop?

A. That was the cost put up here.

Q. I want to know what that was worth at Detroit; not what it cost to put it up here, but what it cost in the shop to buy it?

A. It varies in size.

Q. What was the size you proposed to use here?

A. Some were two and a half and some were three.

Q. What were they worth?

A. About $3.10 a foot.

256 Q. How many feet would be required in a factory of this kind?

A. I could not tell how many. We figured it up and extended the prices as we have there, sir.

Q. How does the prices of this machinery that you spoke of above—the boilers, engines—compare with the prices two or three months ago?

A. I could not tell you that.

Q. Are you not in the business?

A. No, sir.

Q. You don't know whether boilers and engines have advanced in price or whether they were worth more three months ago than they were in March, 1881?

A. No, sir. I guess there has not been much of an advance in iron.

Q. Here are some hangers, pedestals, and journal bearings; what were they worth at that time?

A. I could not tell you without looking at the list.

Q. This was the basis you figured it in?

A. Yes, sir.

Q. You don't know without looking at this what they were worth at that time?

A. No, sir; I don't.

Q. Do you know what they are worth now?

A. If you would give me the sizes I might be able to state to you.

Q. Don't you know what sizes you wanted to use?

A. Yes, sir; but I cannot remember now without looking at that list what it was.

Q. You figured on this manufactory that you expected to erect?

A. Yes, sir.

257 Q. What were those journal bearings and pedestals worth?

A. All the way from three and a half apiece up to five.

Q. How many did you expect to use?

A. I could not tell you now.

Q. There were some pulleys 84 by 10?

A. I could refer back to the prices of these and tell you. We figured them there at what they were worth at that time. These prices were figured up at what it would cost to put them up here at that time.

Q. State that again.

A. These prices were figured on a basis which included the transportation and expense of coming here to put them up and put them in operation, and consequently the prices are made higher than they would be for machinery in the shop. The trouble of putting it up and the freight are added.

Q. What are these pulleys worth to buy them at the shop?

A. I could not tell you now.

Q. Then you don't know the value of these articles?
A. I can tell by referring to the list.
Q. By referring to the lists you can find out what the values are?
A. Yes, sir.
Q. You have no such lists with you?
A. No, sir.
Q. There are four pulleys 30 by 10?
A. They may be worth $14 or $15.
Q. Each or all together?
A. Each.
Q. 12 pulleys 24 by 10?
A. They might have been worth $10 or $11 at the time. I cannot tell accurately. It is impossible to carry the prices of all of these articles in your head. It is impossible to tell without referring to the list.

258 Q. Did you deal in this?
A. Yes, sir.

Q. There are 8 pulleys 72 by 10. What were they worth?
A. I could not tell without referring to the list.
Q. To a list made by yourself?
A. No, sir; we were governed by other factories' lists to a certain extent.
Q. The lists you have reference to is your sale-lists?
A. Yes, sir.
Q. Here are 4 pulleys 32 by 10. What were they worth?
A. I can only say that the prices probably vary in the neighborhood of $14 or $15, along there.
Q. $14 or $15 each?
A. Yes, sir.
Q. 32 pulleys 24 by 5½. What are they worth at that time, and what are they worth now?
A. I cannot tell.
Q. There is one pulley 48 by 8. Can you tell what that is worth at that time or what it is worth now?
A. I could not tell without the price-list.
Q. One 20 by 8?
A. I could not tell.
Q. One 12 by 8?
A. I could not tell you.
Q. One 30 by 8?
A. I could not tell; $10 or $12; along there somewheres.
Q. One 30 by 8?
A. About the same.
Q. One 24 by 8?
A. I could not tell you that.
Q. There are 20 24 by 5½.
A. I could not tell without the price-list. It is impossible to carry them in my mind.
Q. 10 20 by 10.
A. I could not tell.

Q. 24 pairs of mitre gears. What was those worth at that time?

259 A. They varied as to size. I could not say. At that time we had a list of them for the sugar works there and we had the prices from that. I suppose we used the same prices.

Q. What were those prices at that time?

A. I could not tell that.

Q. Do you know what they are now?

A. No, sir; not without reference to the list.

Q. This was machinery that you furnished for that establishment?

A. Yes, sir.

Q. And the machinery upon which you figured?

A. Yes, sir.

Q. Upon the quantity upon which you figured what was that worth?

A. I could not tell without referring to the list.

Q. I-center shafts. What were those worth?

A. They varied in length. They were worth all the way from $1\frac{1}{2}$ to $2\frac{1}{2}$ a foot.

Q. What were those worth that you proposed to use in this establishment?

A. What prices are named there?

A. That is what I want to know, want you to tell.

A. I cannot remember the prices down on that list now.

Q. You don't remember what it is now. You don't remember now what those center shafts were worth at that time or what they are worth now?

A. If you would give me the list I could probably give you an idea.

Q. 20 pedestals. What were they worth?

A. Varied all the way from three and a half to seven. Varied according to size.

Q. What were the sizes worth such as you proposed to use in this establishment?

260 A. From four and a half to five dollars apiece.

Q. Just state what you proposed to use in this building. You must have had your mind bent on some specific size of pedestals that was to be used there. You knew what kind of machinery was to be erected here?

A. Yes, sir.

Q. You knew what kind of machinery was proposed to be put into it?

A. Yes, sir; I figured the matter over carefully, and I studied the matter carefully, but I cannot state just what each article was worth in this manner.

Q. There are ten pair of bevel gears. What were those worth?

A. I could not tell you, sir.

Q. You have no idea what they are worth now?

A. No, sir.

Q. Here are some elevator buckets. What were those worth?

A. The prices are extended there, whatever that is.
Q. What were the- worth then?
A. I could not tell you, sir.
Q. Do you know what they are worth now?
A. No, sir.
Q. Do you know what they were worth?
A. No, sir.
Q. Do you know how many were expected to be used in the building?
A. I think we did when we figured them up.
Q. What was the belting worth that you proposed to use in this building?
A. Different prices. As I said, we estimated the amount required and figured it up and extended the prices.
261 Q. Did you sell belting in your establishment?
A. Yes, sir.
Q. Manufacture it?
A. No, sir.
Q. Sell it?
A. Yes, sir.
Q. Do you know the amount of the belting that was needed in this establishment?
A. We estimated about what we needed.
Q. Do you know how much was needed at that time?
A. No, sir.
Q. Do you know anything how much that belting that was to be used at that time was worth?
A. Not without knowing the quantity.
Q. But you figured on some definite quantity?
A. We did at that time.
Q. You don't know now what that quantity was nor what it was worth?
A. No, sir.
Q. These platform elevators. What were they worth?
A. At that time that particular elevator was worth about $900.
Q. These all conveyors. What were they worth?
A. I could not tell you.
Q. Four first converters complete. What were they worth?
A. I could not tell you without referring to the list and figuring the material in that.
Q. You don't know, then, what they are worth?
A. No, sir.
Q. You cannot give any idea now what they are worth?
A. No, sir.
Q. There was one open evaporator. What was that worth?
A. I could not tell you without referring to that list.
262 Q. Have you ever bought any?
A. No, sir.
Q. Have you ever sold any?
A. No, sir.
Q. Have you ever dealt in any at all?

A. That was the first one we used; we estimated our cost on that.

Q. You don't know what it cost? You cannot state now what it cost at the factory?

A. No, sir.

Q. 4 high-pressure converters. What were they worth?

A. The same prices as the ones we have on the list.

Q. What were they worth? What were they worth at the time, then?

A. I could not tell you now; at that time we had time to figure on these items.

Q. You did not take the time while these gentlemen were there?

A. We had gone over the figures previous to that, because we had figured for other parties; we had the figures in our minds at that time, in part.

Q. Now you say that you don't know what those four high-pressure converters were worth at that time?

A. At that time I did.

Q. You don't know now what they are worth?

A. No, sir.

Q. Do you know how much these neutralizers are worth?

A. I could not tell you what the prices are now—what they are worth now.

Q. Do you know what they are worth now?

A. No, sir.

Q. Do you know what they were worth then?

A. The price is extended.

263 Q. Do you know what the forty first filters are worth?

A. I could not tell you now.

Q. The sweet-water clarifyers. What were those worth?

A. The prices are extended.

Q. You don't know what they are worth at the shop?

A. No, sir.

Q. You don't know what they are worth now?

A. No, sir; I knew then.

Q. What are those two vacuum pans worth?

A. I could not tell you.

Q. Two filter presses. What are they worth?

A. I could not tell you.

Q. Here are two coolers or mixers. Do you know what they are worth?

A. Nothing, only what we have there.

Q. You don't know what they cost now at the shop or what they cost then at the shop?

A. No, sir.

Q. Three cold-water pumps. What were they worth?

A. The price is extended there, whatever that is; I cannot tell you.

Q. What are they worth today at the shop?

A. They vary.

Q. The kind you proposed to use in this establishment?

A. I could not tell you; we did not generally deal in them at that time; we had the prices.

Q. One sweet-water pump. What is that worth?

A. I could not tell you.

Q. One boiler feed pump, I believe it is. Can you state what that was worth at that time?

A. I could not tell you.

Q. One syrup pump?

A. I could not tell you.

Q. Eight bonebalck filters?

264 A. I could not tell you.

Q. Don't you know what they cost at the shop?

A. No, sir.

Q. Two boneblack receivers. Do you know what they were worth?

A. No, sir.

Q. Or what they are worth now?

A. No, sir.

Q. One boneblack truck. Don't you know what that is worth?

A. No, sir.

Q. One boneblack elevator, I believe it is. You don't know what it is worth?

A. No, sir.

Q. You don't know what it cost at the time at the shop?

A. No, sir.

Q. Do you know what it cost now?

A. No, sir.

Q. One scale for chemicals. Do you know what that is worth?

A. No, sir.

Q. You don't know what it cost?

A. Not now, I don't.

Q. Copper and lead pipe to be used in the factory. You don't know what that cost?

A. No, sir.

Q. One cast-iron pipe.

A. We estimated a certain amount required and extended the prices accordingly.

Q. You don't know what it cost?

A. No, sir.

Q. One wrought-iron pupe.

A. No, sir.

Q. Is iron more valuable now than it was then?

265 A. I guess it don't vary much in prices now from what it was then.

Q. Globe valves. Do you know what they are worth?

A. I could not tell you.

Q. One bone coal retort. Do you know what that cost?

A. No, sir; I don't.

Q. One Patter press. Do you know what that cost?

A. I could not tell you now.

Q. Five water tanks. You don't know what that cost?

A. No, sir; the prices are put down there.

Q. Were the prices put down here opposite these various items intended to represent the cost of the things there?

A. No, sir.

Q. What did it represent?

A. It represented what they would cost put up here in the building ready for use.

Q. It don't embrace freight and trouble of putting it up?

A. I will not be certain about that. I think the freight was to be estimated at a certain amount on some of the machinery and some for setting it up.

Q. So you think that the prices estimated here included the prices for the freight and the price for setting it up; some of them do and some of them don't? Now, for instance, when you put down these boilers did they or did they not?

A. They were just the prices; just the manufacturers' prices at that time.

Q. As put down here?

A. Yes, sir.

Q. What machinery was it that you proposed to pay freight on?

A. Freight on those engines and boilers shipped to——

Q. But that, you say, was not embraced in the price?

266 A. No, sir.

Q. Five boilers put down at $7,337.50 did not embrace any freight or cost of putting up?

A. That was the cost at the manufacturers.

Q. Did the cost of the engines embrace any freight?

A. No, sir.

Q. The engines was the cost at the manufactories?

A. Yes, sir.

Q. The bolting chest that you have here, did that embrace the freight, the price you have it at here?

A. I could not say positively now.

Q. The remainder of the things besides the boilers and the engines, did the prices there set down include freight?

A. I could not remember now. I did at that time.

Q. Who helped you figure this out?

A. Mr. Rogers. Between his judgment and mine we figured the prices up.

Q. If you cannot give the value of these articles that I asked you about here at the shop now, and you don't know what they cost then, how can you say so confidently to the jury that your profits were to be $21,000?

A. We figured it up; we figured up the cost of the machinery.

Q. Can you state now to the jury upon your own knowledge as to what your profits would have been?

A. Yes, sir.

Q. Can you state definitely what any one of these items is worth?

A. No, sir.

Q. Then how can you state what your profits would have been?

A. Because I knew at the time and figured the cost at the
267 shop.

Q. You figured then and remembered then what your profits were, but you don't remember now?

A. We extended all our prices as we made them up.

Q. Do you know how much you put down here for freight?

A. I don't remember now.

Q. Do you remember how much you put down for setting the machinery up?

A. No, sir; I don't remember.

Q. So all you know of what your profits would be now is from what you figured up at that time?

A. Yes, sir.

Q. If you cannot tell what these various items are worth—if you cannot tell what the separate items are worth—how can you state what the whole list will cost?

A. We did know at that time.

Q. I am talking of now. When you made up this list, Mr. Michels, you were not under oath; now you are under oath, I want you to tell this jury, if you can tell, what it was worth—what it would cost to put up this thing.

A. I could not tell today.

Q. Can you tell what it would cost at that time?

A. $60,000, we figured it.

Q. The way you figured it?

A. Yes, sir.

Q. What it cost from your knowledge of the various items of the machinery?

A. The per cent. is about three-fourths.

Q. Can you tell of your own knowledge?

A. I can only tell you that if I buy an article at seventy-five cents and expect to make twenty-five cents I shall have to sell it for a dollar.

268 Q. I understand you to say, Mr. Michels, that your profits, your entire profits, were $21,000, and yet you cannot tell the prices of these various articles that I called your attention to?

A. No, sir.

Q. You cannot state what they are worth today?

A. No, sir.

Q. You cannot state what they were worth then?

A. No, sir; but I know that that is what it figured up at that time.

Q. All you know about it is that your profits were to be $21,000?

A. Yes, sir.

Q. You don't know how much you have set down the freights at or how much for setting up the machinery?

A. No, sir.

Q. You don't know whether those figures embrace the cost of shipping the machinery and putting it up or whether they were the cost?

A. I could not tell you that.

Q. You say you came here about the 12th of March?
A. Yes, sir.
Q. What was the object of your coming here?
A. I was requested to come here with Mr. Olmstead.
Q. For what purpose?
A. To inspect a building that he was to use for that purpose to put his machinery in.
Q. You saw a number of gentlemen while you were here, Mr. Michels?
A. Yes, sir; a good many of them.
Q. In reference to the formation of a corporation for the purpose of manufacturing glucose?
A. Three or four.
269 Q. Among them you remember to have seen Mr. Hall, do you not?
A. I saw a man by the name of Hall at that time.
Q. Was it not part of your business to form a company, a corporation?
A. No, sir.
Q. Did you not have a meeting with these gentlemen expressly for the purpose of forming a corporation?
A. No, sir; I simply attended the meeting with them.
Q. Did you not meet some gentlemen—Mr. Leach, Mr. Olmstead, and some other gentlemen—at the Lindell hotel?
A. Yes, sir.
Q. Did you not have a meeting there expressly for the purpose of seeing about the formation of a corporation—of the formation of a company?
A. Mr. Olmstead wanted to get these gentlemen there and tell them what he had seen?
Q. Mr. Olmstead wanted to get these gentlemen there and tell them what he had seen?
A. Yes, sir.
Q. He wanted you to be there?
A. Yes, sir.
Q. What was his purpose?
A. Simply to report to them what he had seen.
Q. Just as a matter of news?
A. I don't know.
Q. Don't you know that these gentlemen had met there partly at your solicitation for the purpose of forming a corporation?
A. No, sir; it was not.
Q. Don't you know that they met there expressly for the purpose of seeing whether they would form a corporation?
A. They went at Mr. Olmstead's solicitation.
Q. Don't you know that they met expressly for the purpose of seeing whether they would form a corporation or not?
270 A. I was simply there to see what they had to say.
Q. Just as a spectator; had no interest in what they were doing?

A. I had no interest further than I came here to inspect the building.

Q. You came here expressly to inspect the building?

A. Yes, sir.

Q. At whose suggestion?

A. Mr. Olmstead's.

Q. What did you do at that meeting at the Lindell hotel, Mr. Michels? What was your object in going there?

A. To hear Mr. Olmstead tell his story.

Q. To hear Mr. Olmstead tell his story?

A. Yes, sir.

Q. You knew what his story would be?

A. Yes, sir.

Q. Before you went there?

A. Yes, sir.

Q. Was that the sole object of your going to that meeting?

A. He wanted I should be there. He wanted to tell his friends what he had seen.

Q. Do you tell this jury that you just went there for that?

A. I went there and showed them a plan I had of their works.

Q. You showed these gentlemen a plan, you say, of their works?

A. Yes, sir; I took — there.

Q. Did you not tell Mr. Hall, among others, that this was a splendid investment; that it was a money-making thing?

A. I don't recollect of telling him that.

Q. Did you not tell him that yourself?

A. No, sir.

Q. You swear to this jury that you did not tell Mr. Hall that this was a money-making investment?

271 A. No, sir; I have no recollection of stating anything of the kind.

Q. Do you remember that Mr. Olmstead was there at that time?

A. Yes, sir.

Q. You do remember that Mr. Hall was there at the time?

A. Yes, sir.

Q. And Mr. Harris?

A. Yes, sir.

Q. And Mr. Leach?

A. I think he was there.

Q. At that time or sometime during the progress of the meeting was not something said about this contract and Mr. Olmstead said that that contract was not binding between you?

A. There was not, sir.

Q. And then did not Mr. Harris state that that was not a contract between you but simply a basis for the company to form upon?

A. I don't remember anything about that.

Q. Where was this meeting held, Mr. Michels, at the Lindell hotel?

A. In the parlor.

Q. You say you showed these gentlemen a plan for the building?

A. Yes, sir.

Q. Did you show them a diagram of the works you were to put up?

A. No, sir; just the building without any plans.

Q. Was there any discussion about these prices of the machinery?

A. Nothing more than he made an explanation.

Q. Was there any discussion there about the prices?

A. I can only tell what Mr. Olmstead said.

272 Q. Did any one say anything to Olmstead?

A. He was the one that said anything.

Q. Did any gentlemen state that these prices were too high?

A. No, sir; not that day.

Q. There was no talk there between these gentlemen assembled there in regard to the prices mentioned in this schedule?

A. No, sir.

Q. In regard to the prices of the machinery to be furnished?

A. No, sir; nothing. Mr. Olmstead got the parties together to tell them what he had seen down there.

Q. That was the whole purpose of the meeting; that was all that was done; Mr. Olmstead just told what he had seen?

A. As far as I know; I don't know what the intention was.

Q. Did you have another meeting at the hotel?

A. No, sir.

Q. Did you have another meeting with the gentlemen at all?

A. I met them the following morning—Mr. Olmstead and Mr. Leach only.

Q. You met Mr. Olmstead and Mr. Leach the following morning at Mr. Olmstead's office?

A. Yes, sir.

Q. At the meeting which you held the next day Mr. Olmstead called your attention to these prices again, did he not?

A. Yes, sir.

Q. He called your attention to the engines and boilers?

A. No, sir.

Q. What was it he called your attention to?

A. He said that Mr. Leach had a schedule list of machinery. He came in while I was there in the office. He had been over to a neighboring machine shop, I should judge from the way he came. He said he had been over to the shop there and he found the prices was too high, and Mr. Olmstead wanted to know if I would

273 take fifteen per cent. of the whole contract. I told him, No.

Q. You say that Mr. Olmstead asked you if you would not take fifteen per cent. on the whole contract?

A. Yes, sir.

Q. You swear to that?

A. Yes, sir.

Q. You are certain of that?

A. Yes, sir.

Q. Who were present at that time?

A. Mr. Harris.

Q. Was Mr. Leach present?

A. I think not.

Q. Was Mr. Hall present?
A. I think not.
Q. There was nobody present except you and Mr. Harris and Mr. Olmstead when Mr. Olmstead asked you if you would take fifteen per cent. upon the whole contract?
A. There was quite a general conversation there. I cannot tell you the whole of it.
Q. I want to know if Mr. Olmstead said that?
A. That is what he said.
Q. He had spoken to you about the vacuum pan?
A. I have no recollection of his naming any particular article at that time.
Q. No recollection of his naming the vacuum pan or pulleys?
A. No, sir. He said that the man at the shop said the prices were too high.
Q. Without specifying any particular article?
A. Yes, sir.
Q. And then it was that he asked you if you would take fifteen per cent.?
A. That was at his office, down near his lumber yard.
Q. In West Kansas City, down near the depot?
A. Yes, sir; near where his fire took place.

274 Cross-examination.

By C. O. TICHENOR, ESQ.:

Q. Since the signing of this contract who has had this schedule that Mr. Peak has been asking you about?
A. I presume that is the one that was left with Mr. Hall. I could not tell you.
Q. You have not had it?
A. No, sir.
Q. What is the total of these figures that are there?
A. $81,160.
Q. That is the contract price?
A. That is the contract price.
Q. In that figuring where did you get the information that you figured upon, you and Mr. Rodgers?
A. Well, we had been at work several months previous to that figuring with different parties.
Q. Some of the machinery you did not make yourself?
A. Yes, sir.
Q. You had to buy it?
A. Yes, sir.
Q. You say at that time you figured with whom on the contract?
A. With the Rochester (could not hear what it was), party up in Iowa, at Burlington, and a party at Rochester.
Q. This embraced everything that you would want to construct glucose works?
A. I should judge not. There might be some small articles that

were not. There are some minor articles that must be added afterwards.

Q. You spoke about a percentage. I don't understand you exactly. Did you figure on any percentage above cost prices at that time?

275 (Objected to by defendant's counsel. Objection overruled by the court.)

Q. Did you figure those above the actual cost?
A. Yes, sir.
Q. How much?
A. Twenty-five per cent.

In rebuttal of defendant's testimony the witness MICHELS testified as follows:

Direct examination.

By C. O. TICHENOR, ESQ.:

Q. I believe you stated yesterday on cross-examination about the time this contract in controversy was signed, what time of the day was it and what day of the week?
A. Saturday evening about five o'clock.
Q. Mr. Olmstead states that he did not know that that contract was to be drawn up until actually produced there for him to sign; is that a fact?
A. No, sir.
Q. What is the fact?
A. The fact is that the matter was talked of the morning before, Saturday morning, and he called in after dinner to see if it was drawn up; it was not drawn up at that time. It was drawn up between four and five o'clock.
Q. At the time he signed that contract what was said as to his responsibility, personally, or anything of that kind?
A. "Now I understand I will not be holden on this contract for a thousand-bushel house if my friends go back on me." We understood he would be only holden for a thousand-bushel house personally himself.

Q. That is what you stated in that letter that has been in-
276 troduced and read in evidence.

A. Yes, sir.
Q. That is what you referred to?
A. Yes, sir.
Q. State what he said at the time of signing the contract.
A. He said he wished it understood that he should not be held personally responsible for the two-thousand-bushel house. I told him no. We understood he could—if his friends went back on him he could build a one-thousand-bushel house. We would hold him responsible for a one-thousand-bushel house.
Q. Was there anything said about your not making anything on that contract?
A. No, sir; I expected to make something on it.

Q. In your factory there have you made machinery for both processes?
A. We have made machinery for the wet process.
Q. Never made any for the dry process?
A. No, sir.
Q. You make them either way, as parties want them?
A. Yes, sir.

Cross-examination.

By JOHN C. GAGE, Esq.:

Q. You say he said that it was to be understood that if he signed that contract he should not be held to build a two-thousand-bushel house?
A. Yes, sir.
Q. How did he get that understanding?
A. Well, we talked of it before.
Q. Where?
A. In the office.
Q. What was talked of?
A. That matter of the two-thousand-bushel house being binding upon him.
277 Q. Had it all been talked over that he was to sign the two-thousand-bushel-house contract and be liable for a thousand-bushel house?
A. If his friends would not stand by him to erect it.
Q. That had been stated before?
A. Yes, sir.
Q. That the contract should be prepared for a one-thousand-bushel house?
A. No, sir.
Q. Two-thousand-bushel?
A. Yes, sir.
Q. And to be signed by him?
A. Yes, sir.
Q. And that he should not be bound by it?
A. For the two-thousand-bushel house.
Q. He should not be bound to build a two-thousand-bushel house? When did he agree to build a one-thousand-bushel house?
A. That was talked of from the time he came there—for about a day and a half; I should think about Wednesday or Thursday, when the two-thousand-bushel house was brought up and talked of.
Q. When was it that you agreed to build a one-thousand-bushel house?
A. That is the point, when he came there to investigate, to see what the machinery cost for a thousand-bushel house.
Q. You said to him, No; you are not to be bound to build this two-thousand-bushel house, but you are to build a thousand-bushel house?
A. At the times we talked of it.

Q. At what place was he to build the one-thousand-bushel house and at what price?

A. $46,000 and some odd dollars. There was a list made out.

278 Q. He had agreed to build a one-thousand-bushel house at $46,000?

A. If his friends did not help him to build a two-thousand-bushel house he would build that alone.

Q. You say that there was no talk that you were not to make any profit at putting in this machinery?

A. No, sir.

Q. Was there not a talk about the profit on the machinery that was to be bought and a difference on the machinery that was to be made by you?

A. No, sir; there was no such talk as that.

Q. Was there anything said about the manufacturer's profit on machinery that you were to make yourself?

A. No, sir.

Q. Nothing of that kind was said at all?

A. No, sir; we have our regular prices for our work.

Q. There is a manufacturer's profit in it?

A. Yes, sir.

Q. Every manufacturer has a profit or ought to have in his business?

A. That is what we do business for.

Q. And if it is bought anywhere else there is the manufacturer's profit?

A. Yes, sir; two of them.

Q. How?

A. The man that buys and the man that makes.

Q. The man that buys may buy it for his own use. Did you not state both before and after the contract was signed and afterwards when you came down here repeatedly that the prices so far as all the machinery which you did not manufacture yourself was just only cost prices?

A. No, sir.

Q. You never said that?

A. No, sir; I did not.

279 Q. To nobody.

A. No, sir; then or since.

Q. Mr. Olmstead signed this contract, then, without any investigation as to the prices or any assurances from you as to the reasonableness as to the profits that you were to make?

A. I don't know what he investigated; I could not say.

Q. You don't know of any investigation?

A. No, sir.

Q. You fixed the prices and he just agreed to them?

A. Yes, sir.

Q. Without any assurances on your part as to the amount of profits in these prices?

A. He looked at the engines and boilers and he said he thought

he could buy them cheaper, maybe, than we had them estimated at in our schedule. I told him if that was the case he could have the privilege of buying them wherever he pleased.

Q. Anything else—anything about the platform elevator?

A. Yes, sir; the platform elevator and the boilers.

Q. You had them in the contract?

A. Yes, sir.

Q. But they were not to be furnished by you. They were to buy them wherever they could get them?

A. If they so chose.

Q. Then the contract did not mean that they were to buy them at the time?

A. They were to take them at that price; that is the way they understood it at the time.

Q. You thoroughly understood, then, that this two-thousand-bushel house was to be built not by himself, but by a Kansas City company.

A. I understood that he was sent there to represent a party from Kansas City.

280 Q. And that this proposed two-thousand-bushel house was one not to be erected by himself individually, but by a company?

A. He said if he could not build——

Q. Did you understand that that two-thousand-bushel house that you were negotiating about was a house to be erected by a corporation to be formed in Kansas City or by Mr. Olmstead himself?

A. I was going to tell you how I understood. I will answer that is the way I understood it. I told you he came there to investigate the manner of making this article and he talked about a one — bushel house. We suggested a two-thousand-bushel house, with the understanding that if his friends would not stand by him and build the two-thousand-bushel house he was to be let off on the contract and build a one-thousand-bushel house.

Q. Did you understand that the two-thousand-bushel house that you were negotiating about was a house to be erected by a corporation to be formed in Kansas City or by Mr. Olmstead himself? Will you answer that question?

A. I only understood it in that way.

Q. In what way.

A. As I told you a minute ago.

Q. Was the two-thousand-bushel house to be built by Mr. Olmstead?

A. If his friends stood by him.

Q. If the corporation was formed to build that house, then the two-thousand-bushel house that you were negotiating about was to be built by it, was it not?

A. I told you if his friends did not stand by him he was to build a one-thousand-bushel house.

Q. Then there was no proposition that he should individually build a two-thousand-bushel house?

A. No, sir.
281 Q. He told you distinctly that he would not?
A. Yes, sir.
Q. That was a scheme on your part to induce him to build a two-thousand-bushel house?
A. There was no scheme about it; we left it at his option.
Q. It was your suggestion?
A. Yes, sir.
Q. It was at your suggestion and recommendation?
A. He ought to know; we recommended it.
Q. Yourself?
A. Yes, sir.
Q. Where was Rogers the afternoon that Olmstead came away?
A. I cannot tell.
Q. You can tell if he was in around your place in Detroit, could you not?
A. He left my works on the morning at 11 o'clock.
Q. What morning?
A. Tuesday morning.

Redirect examination.

By C. O. TICHENOR, Esq.:

Q. Are those the figures made at the time Olmstead was there on the one-thousand-bushel house (handing witness paper)?
A. Yes, sir.
Q. What was that—how much?
A. $46,360.19.
Q. You figured, then, both ways?
A. Yes, sir.

Recross-examination.

By JOHN C. GAGE, Esq.:

Q. Was any such paper as that given to Mr. Olmstead?
A. Yes, sir; he *was* it.
Q. Was any such paper as that given to him to take away?
282 A. No, sir.
Q. Was any written contract made in accordance with that at the time?
A. No more than what is specified in the other.
Q. No written contract based upon this schedule?
A. Only the one based in the two-thousand-bushel house.
Q. Is that based upon that schedule?
(Could not hear witness'*es* ans.)
Q. Was it stated in a written contract?
A. No, sir; the understanding was that he should change two thousand bushel to one.
Q. Which understanding was a verbal one?
A. Yes, sir.

(Paper introduced in evidence.)

283 C. T. RODGERS, being called in rebuttal of defendant's testimony on the part of the plaintiff, testified as follows:

Direct examination.

By C. O. TICHENOR:

Q. Were you present when Mr. Olmstead came to Detroit?

A. You are talking about the time he came to see about the sugar works?

Q. Yes, sir.

A. Yes, sir.

Q. Go on in your own way and tell what language was used there, what was said, and what was done.

A. I cannot say that I was in the office just at the moment they came in. I was probably there probably a few moments afterwards, and was there during the time they were there.

Q. Just state what you know about it.

A. Do you want me to go back and state all that was said?

Q. Yes, sir.

A. Well, I should have to go back, for the reason that before Mr. Olmstead came there Mr. Harris stopped there and had some conversation and inquired about this dry process, and came on West. I could not give you the details of that, but the outcome of it was this: That Mr. Harris, who I had seen before, came to Detroit with Mr. Olmstead and Mr. Devers. My understanding from all of them—the understanding of all of them, all of the parties—was that they had come there to investigate this so-termed dry process, and if they found it satisfactory to them they were to make a contract for the erection of the works. They came there along—I would not say what day of the week—I cannot call to mind—somewhere
284 along the middle of the week or perhaps the fore part of the week and remained there until after Sunday, probably Monday or Tuesday. I remember distinctly that they went away in the evening, and the matter of building the works was discussed in detail by myself upon every point pertaining to it. The cost of the machinery and the cost of the building that might or would be required and the question of the capacity of the house was discussed. It appears that they had made up their minds, from what I gained of the talk of them before they started, that a house of one thousand bushels capacity per day was what they wanted; but after they came there and thought over the question and made some figures and discussed it *pro* and *con.* they came to the conclusion that it did not cost as much proportionately for a two-thousand-bushel house as for a one. I understood that these parties came here to investigate the matter for themselves and some others. Who they were I cannot say at this time. I may have heard their names at that time, but now I cannot call their names to mind; but before they went away I think it was all considered. This question came up; it might have been the day when the question came up about seeing this process—seeing the goods made. I think I told Mr. Olmstead myself in the first place that we had made a

rule that we would not, under any conditions whatever, show this process to any one unless we had some assurances of their good faith and intention to build works and upon the terms and agreements made. After that matter was discussed divers and sundry times in the office Mr. Olmstead was there more than was either Mr. Harris or Mr. Devers. My recollection is that during the last two or three days Mr. Devers was not there—in the office—at all, and Mr. Harris was not in as much as Mr. Olmstead was.

After discussing this matter in detail as to the size of the house some questions occurred in the course of the conversation that he did not know whether he felt able really to build a two-
285 thousand-bushel house or not. He made this remark: I cannot say Mr. Michels was in the room, but I think Mr. Stebbins assented when he said, "I could build the one-thousand-bushel house myself." That was the first talk about any other house building. One-thousand-bushel house individually; yes; I think it must have been about Thursday. It might have been as late as Friday, but the question of making the contract and the cost of the machinery in detail was discussed, and I said at that time very distinctly that it is very difficult with the limited time we have to make an extended detail of the divers and sundry items required in the works. The result was we made a schedule of the principal articles. We generalized some of the articles. There was a lot of articles not mentioned in the schedule at all. The first question of the contract came up the day before, I think it was; it was signed at night. I know Mr. Olmstead came and made some data, by the way; the evening preceding we had talked over about this contract. I did not get through. I did not get it done because it was quite a task. I had not got it written up. I know Mr. Olmstead came along immediately after dinner, half past one or two o'clock.

A. I think it was Saturday. I cannot say positively whether it was Saturday or Thursday, but anyway it was the same afternoon the contract was signed, and asked me if I had it done. I had not at that time. I don't know whether he remained in the office. I know very soon after that I got my data out again and I finished contract just as we had talked it. Mr. Olmstead came again in the evening, just at night, with Mr. Harris; my impression is they came together; they may have come single. I know it was evening from the fact that Mr. Stebbins was paying off the men, which leads me to think it was Saturday afternoon because the men were paid Saturday evening. I took the writing out and read it, and then
286 Mr. Olmstead read it, and he says, Why, this will bind me to build a two-thousand-bushel house. Why, I says, that is just what we are talking about. Well, he says, I don't want to build this two-thousand-bushel house; if I build it myself I only want to build a one-thousand. We had a pretty general conversation about the matter. Now, I will not say whether it was myself speaki-g for Mr. Michels or Mr. Michels said himself, that if it is not possible for you to raise this money requisite to build a two-thousand-bushel house—I think it was me—that we would change that contract so that it would read one thousand instead of two;

simply change the amount that the machinery or works was to cost; put it to read one instead of two. There was our schedule which had been made first for the one-thousand-bushel house. I remember that the schedule of the machinery was $40,000 and some odd dollars.

Q. That was for the one-thousand-bushel house?

A. Yes, sir; it did not quite double for a two-thousand-bushel house from the fact that some parts were increased in size and others duplicated. Probably in making out the schedules there were a number of minor articles that I did not consider of much importance. That recalls this fact. The prices of this machinery were discussed with Mr. Olmstead and he thought several things were too high. For instance, he had some experience in putting in platform elevators such as are used for passing up and down buildings. He said he thought the price was too high. I was in the employ of Mr. Michels, working on a salary for him, and I says, Mr. Olmstead (could not hear witness'es statement as to what he told Olmstead). He then spoke of the boilers and engines. This, however, was before. I think either in the afternoon of Saturday or in the afternoon of Friday. I wouldn't say as to these two days. He asked me—I think Mr. Michels was present; I think his son was present; I don't know whether Mr. Stebbins and Mr. Harris was or not; I cannot call to mind now—he asked me, "Now, why not make a percentage on this machinery? Let me buy,
287 myself, at what rates I can." I replied, Mr. Olmstead, we cannot do that for the very reasons explained here. Reasons which were in buying machinery in divers and sundry places the expense of getting it together in the proper shape to run was very considerable, and that we proposed to build a very considerable part or portion of the machinery there in the shop.

Q. You heard Mr. Olmstead's testimony. He says it was the agreement outside of the contract and before he put his name to it that he was not to be bound at all.

A. It is not the fact; it was well understood when Mr. Olmstead and Mr. Harris came there that he could not see that process unless we hade some good assurances of the parties' good faith. We had other parties coming there right upon the same point.

Cross-examination.

By JOHN C. GAGE, Esq.:

Q. Where were you when Olmstead left Detroit?

A. Well, I am sure I cannot tell you.

Q. Were you in Detroit?

A. I will not say whether I was or not.

Q. You say that you remember that he went away at night. How do you know that if you were not in Detroit?

A. From the fact that they were hurrying us up at the shop so that they could get away at night.

Q. You don't know whether he went away at night or not?

A. I have every reason to believe he did.

Q. Were you in Detroit that night?

A. I cannot say. I might have been out of town and I might not.

Q. Where were you when Michels came to Kansas City the next Sunday?

A. I presume I was in Rochester, New York. I might not have been. I presume I was.

288 Q. Where were you the next Monday?

A. I suppose I was in Rochester.

Q. Did you get any telegrams from Mr. Michels to know what was the matter with you?

A. I don't know.

Q. Why, you were not here in Kansas City?

A. He may have telegraphed me asking those questions. I don't remember of receiving more than one or two telegrams from him on that day after he got here.

Q. Were you then engaged for the same company?

A. Yes, sir; engaged for Mr. Michels, away following——

Q. Following up Mr. Michels' directions in that respect?

A. Yes, sir.

Q. Mr. Michels sent you to Rochester—knew you were going?

A. He knew I was going there or he could not have telegraphed me.

Q. He sent you there—directed you to go there?

A. I don't know whether he directed me to go there or not.

Q. You had his consent?

A. At that there was some little question of judgment. It was in the—we had made some figures on the machinery for a company there. I went to see about these figures; jut what position Mr. Michels took I cannot say.

Q. You don't know whether Mr. Michels wanted you to go to Rochester or not?

A. I cannot say whether he made any statement or not.

Q. You knew he wanted you here the next Sunday or Monday?

A. I know he told me to come. I would not say as it was Sunday or Monday, but very soon afterwards.

Q. How many telegrams did you get in one forenoon from him?

A. I could not say.

Q. Get as many as three?

A. I may have gotten three; I don't think I did. Per-

289 haps I did; get one or two; might have gotten three. I would not say at this time.

Q. How long after you got this instrument signed was it before you telegraphed the Rochester people that you were coming right there? You did tell them before you went.

A. I say I don't know whether I telegraphed them or not.

Q. Do you know when you went? Do you know what day with reference to the signing of that contract that you left?

A. It seems to me as though I went to Rochester along about Tuesday or Wednesday; perhaps as late as Thursday; two or three

days after the signing of this contract; that is my best impression as to the date.

Q. Were you there the day they went into the room to make the syrup?

A. Yes, sir.

Q. Do you know what day that was?

A. I am not certain; I think it was Monday.

Q. Where were you Tuesday when it was finished?

A. I think Mr. Stebbins finished the boiling.

Q. Where were you?

A. I cannot tell you where I was.

Q. Were you in Detroit?

A. I don't know whether I was or not. I cannot remember where I was that particular day. It has been some time ago since then.

Q. How came you to be at Rochester and by whose consent? You don't know much about that; how you came to go to Rochester or when or whether it was — Michels' consent or knowledge you cannot state?

A. I don't know whether I went with his consent or not.

Q. Or against his will?

A. I cannot remember; I don't remember.

290 Q. I understand you went there to represent him for his benefit?

A. I did; but I represented him in a good many things when I did not ask him about going.

A. When he did not want you to do it?

A. No; I did not say that.

Q. Against his will?

A. Yes, sir; I made some figures against his will on some work; took a contract for him.

Q. You cannot say whether you went to Rochester against his will or not?

A. No, sir; I cannot say that.

Q. Don't you know that he denounced you for going there?

A. No, sir; I never heard of that before.

Q. Were you not informed that he denounced you as the biggest kind of a rascal for going off?

A. Where?

Q. Here in Kansas City and where you went.

A. I don't know of any such thing.

Q. What language did Olmstead and Harris use? Did they say we will do it; we want to build it? Harris and Olmstead were the men that talked what they wanted to do personally?

A. I understood all the time that Olmstead was the managing man to build the works.

Q. It was his money that was going to build these works?

A. Yes, sir.

Q. You did not understand that anybody else was going to help him?

A. He was going to try to induce other parties to help him buy this sugar-house.

Q. Did you hear anything about a company being formed here?

A. He was talking about forming a company; yes, sir.

Q. Did he tell you that was why they came up to investigate and to see what you could do there and what kind of terms
291 you would make and report here? Did he inform you that or did he not? You can answer that question?

A. I think he made the remark that he came there for the purpose of investigating the matter for himself and others, but just the words I cannot remember.

Q. Then you don't know, Mr. Rodgers, that an arrangement was made there by which you and Stebbins and Michels were to take some stock in the corporation they were getting up here?

A. Provided they could get it up.

Q. You did know something about it?

A. No; I was not to have any stock, because I did not have this interest.

Q. You were not to have any interest in that stock?

A. I had no bargain or arrangement at that time to have a cent's value.

Q. What did you know about the stock?

A. There was no stock to know anything about. It was a matter of talk whether he could get up this company or not.

Q. There was some talk about getting up the company, was there not?

A. He said he could get up the company.

Q. There was talk of you and Stebbins and Michels taking some of that stock, was there not?

A. No, sir.

Q. Any one to take some of that stock?

A. Michels was to take some of that stock if the company was formed.

Q. If the company was formed and everything was satisfactory Michels was to take some of the stock?

A. Yes, sir.

Q. Was there any talk about your having a part of that stock?

292 A. I expected to have some, if the works were really built, as compensation for services outside of my regular salary, but I had no bargain at that time.

Q. There had been something said about a company. Did you give Mr. Olmstead any samples of this product that was made there?

A. I did not give him any; no, sir.

Q. You don't know of his taking any?

A. I don't believe I was in the room.

Q. You were not there when he took that?

A. I don't believe that I was in the room.

Q. You were not there when he took that?

A. I cannot say that I was. I cannot say that I was not. I can-

not remember about that. There was a great deal of talk. I cannot remember those points.

Q. Now, Mr. Rogers, there had been talk about a contract that was to be made. You had found out what kind of a contract could be made, ascertained that, and told him what kind of a contract you were willing to enter into?

A. Yes, sir.

Q. And you were discussing the prices you were willing to furnish the machinery for these works?

A. Yes, sir.

Q. To furnish that machinery to whom?

A. Mr. Olmstead.

Q. Mr. Olmstead alone?

A. Yes, sir.

Q. There was no talk about a proposed company during all of those days what he proposed to do himself. He was the man that came there first and proposed to build a one-thousand-bushel house and then to build the two-thousand-bushel house himself?

A. I didn't say that.

Q. Was he?

A. I have told you I don't know whether it — twice or not.

293 Q. Tell it again, whether at any time he proposed to build a two-thousand-bushel house.

A. Yes, sir. After he had been there a couple of days he said he could raise a company and build a two-thousand-bushel house.

Q. I ask you whether he was to personally build it or not.

A. He personally proposed to build a one-thousand-bushel house.

Q. I am asking whether he proposed to build a two-thousand-bushel house personally.

A. I cannot say whether he did or not, positively. I gained the impression that he would build a two-thousand-bushel house, but I don't think he said so in so many words.

Q. You were making figures there for two or three days for a two-thousand-bushel house?

A. No, sir. I was first making them for a one-thousand-bushel house.

Q. When did you go to making them for a two-thousand-bushel house?

A. I guess Thursday afternoon or Friday morning.

Q. What did you make the change for?

A. To build a two-thousand-bushel house, simply because the machinery would cost less in proportion.

Q. How much less?

A. I cannot tell exactly.

Q. It was not much less?

A. I don't know that I told him.

Q. Much less; considerably less; twenty-five per cent. less; a half less?

A. I should say that it would cost——

Q. What you told him.

A. I don't — what I told him.

Q. This talk about a two-thousand-bushel house began
294 about Thursday?

A. I think, perhaps, Wednesday afternoon or Thursday morning.

Q. And you say that after that you were figuring on a two-thousand-bushel house?

A. My impression is that I began figuring Thursday afternoon. I had the figuring done before I wrote the contract at all.

Q. You just got it done Saturday afternoon?

A. I got the contract; yes, sir.

Q. Tell the jury whether that proposed contract for the two-thousand-bushel house was for a house to be erected by Mr. Olmstead personally or by a proposed company; whether that was the talk.

A. Mr. Olmstead changed his base so many times that I would have to stop and think just what he did say. I don't know as I can tell you just exactly the remark he made. I remember one remark he did make distinctly, and that is that if he could not raise this company that he would build the one-thousand-bushel house personally.

Q. He was not going to build that before he saw whether you could make the glucose or not?

A. He said this immediately after he raised up from the *y*able after signing this contract, and — he raised up from that he made that remark.

Q. What were you going to make that experiment for?

A. To demonstrate that we could make these goods.

Q. But you say he was to build the house whether you could demonstrate that or not.

A. No, sir.

Q. I thought you said he had determined to build it as he rose up from the table?

A. That was all on the condition that we could make these goods satisfactorily. After we made the goods he said he was
295 satisfied—more than satisfied.

Q. He did not get up and say, I will build that house at all events—the one-thousand-bushel house?

A. As he rose up he said if he could not get his friends to build the two-thousand-bushel house he said he would do it——

Q. You said that was by your making permanent glucose by your process?

A. No, sir; that is not what I said. I said if he was satisfied.

Q. If he was satisfied?

A. And he was satisfied after the goods were made.

Q. Then he did say, just as he wrote his name, when he rose up, If my friends desert me and I cannot put — the two-thousand-bushel house, I can and will build a one-thousand-bushel house if I am satisfied upon this exhibition that you can make the goods?

A. No, sir; that is not what he said. He signed this contract for a two-thousand-bushel house, a two-thousand-bushel house per day, and he says, If my friends desert me, I can *and* build and will build

a one-thousand-bushel house myself, individually. That is what he said.

Q. He said he would do that if he was satisfied, on your exhibition, that you could make glucose by your process?

A. There was not anything said about that at that time. That was distinctly understood—that if the process was not satisfactory the contract was not to be good.

Q. Then, did you go upon the basis that the process was to be a useful thing?

A. It was to be like that made by another house.

Q. What house was that?

A. That was the house across the river, near Windsor.

296 Q. The very same place where this man that makes the glucose here came from?

A. Yes, sir.

Q. The same place where a great many goods came back again?

A. Very large percentage. I think the man that understood the business went away and they could not make the goods any more.

Q. Don't you think that a large proportion of their goods that come back were utterly—— (Could not hear the word.)

A. I don't think that ever a barrel came back that was——

Q. I said a larger proportion.

A. I don't think one barrel came back utterly ruined.

Q. Unmerchantable and useless for the purposes of sale as a syrup?

Q. These goods here was not made for merchantable goods, and it was so understood when they were made. There was no—there was no——

Q. Was there any doubt in the world that you could make an article like that out of corn by the dry process? Did not everybody know that it could be made?

A. I think that everybody did not know that it could be made.

Q. Is it not of common knowledge that an article of glucose can be made from corn by the dry process?

A. I think that it is the prevailing impression of people that have not investigated the matter at all.

Q. Don't you think that Mr. Hamlin knew and has known for a good many years that it could be made?

A. Such an article as that?

297 Q. An article of glucose from corn.

A. Such an article as that?

Q. Yes, sir.

A. No, sir; from the statement I heard read I don't think he knows that.

Q. You don't think he has made a great deal of it himself?

A. I don't know how much he has made.

Q. Is not the only question that has existed in the minds of anybody that knew anything about it been whether they could make a merchantable article at an expense so as to make it profitable?

A. I don't know as I understand what you mean by a merchantable article.

Q. One that will sell in the market.

A. The one that was furnished by me to Mr. Olmstead then I think will sell today and bring a good price. It is according to what a man wants to use it for.

Q. What may it be used for?

A. It may be used for brewers' use, some for tobacco-makers, and some—— (Could not understand what it was.—REP.).

Q. What is a merchantable article of syrup?

A. Anything that will sell.

Q. Do you undertake to say that an article that tastes bitter and stinks is a merchantable article of syrup?

A. Yes, sir; it depends on what you want to use it for.

Q. Is that a merchantable article, one that stinks?

A. If you want to use it for some purposes it don't make any difference whether it stinks or not.

Q. Do you know what kind of syrups were sold?

A. I know of several kinds that are sold.

Q. Do they sell those as merchantable articles that stink and are bitter?

298 A. I never seen any of that class of syrups.

A. You have not been in the market buying and selling syrups, have you?

A. No, sir.

Q. A broker or wholesale trader knows what is a better article that you do?

A. Yes, sir; he knows better for the grocery, but I don't know as he knows what is better for the tobacco-maker.

Q. Don't the broker sell to everybody?

A. No, sir.

Q. Sells more to the brewers than he does to the merchants?

A. I think not.

Q. Who does sell to the brewer if the broker does not?

A. I presume there is instances where they sell brewers, but I think they generally buy direct from the factories.

Q. Do you know whether the fact is that the question with manufacturers in regard to this dry process has not been whether syrup could be produced, but whether it could be produced profitably; has not the fact been long established that it could be produced?

A. Well, you say for a long time; no, I don't think it has been established so very long a time.

Q. State what you mean by a long time.

A. I mean to say ten years.

Q. Has it been known ten years that it could be produced?

A. Profitably?

Q. No; produced at all.

A. It has been known that it could be produced, who used such a class of goods, since Napoleon started.

Q. That it could be produced by the dry process?

A. Yes, sir; simply——

299 Q. Then your demonstration there that syrup could be made by the dry process was not a demonstration of any new or doubtful fact?

A. Well, yes, sir.

Q. Whether it could be produced by the dry process?

A. Yes, sir.

Q. Was it a demonstration of any new or doubtful fact?

A. There was the question demonstrated whether the conversion could be made, the manner in which it was done, and that it was done practically; there is where the point comes.

Q. Then what you went there to prove was that you could make a complete and perfect conversion, was it?

A. No, sir; that is not what we wanted to prove.

Q. I understand you that the main fact that you agreed to show Mr. Olmstead was only that sugar could be made by the dry process, and the perfect conversion, there was nothing about a perfect conversion. I understood you to say awhile ago that what you were undertaking to demonstrate to him was the pure fact that syrup could be made from corn?

A. Yes, sir.

Q. Was that it?

A. Yes, sir.

Q. And I say that that was neither a new or a doubtful fact that you proposed to show him?

A. The manner in which it was done was a comparatively new thing except to a very few persons.

Q. Did you propose to show him the secret of doing it?

A. No, sir; from the simple fact——

Q. All you proposed to do was the manner in which it could be done?

A. Yes, sir.

Q. I thought you said it had been known since Napoleon's time that it was possible——

A. To convert starch into glucose.

300 Q. I understood you—you say it has been known since Napoleon's time that you could convert corn meal into syrup and by the process you proposed to show him?

A. I did not say that.

Q. What did you propose to show him? Just tell us.

A. I have told you four or five times. We proposed to show him that we could convert corn meal into sugar or glucose.

Q. And that was not a new fact?

A. The manner in which we done it.

Q. Did you propose to let him understand the manner of doing it?

A. No, sir.

Q. Then that was not what you proposed to give him?

A. We proposed to show him that we could do it by that process, and did it.

Q. Has not Mr. Hamlin been doing it for ten years?

A. No, sir.

Q. Did he not have a dozen patents to do it that way?

A. I don't think so from the fact that he does not do it.

Q. You say that you did not propose to show him that you could make a merchantable article?

A. No, sir.

Q. Or that it would be a commercially valuable secret?

A. That we did not propose to show him.

Q. No?

A. We proposed to show him that we could make the conversion, as I remember, and also told him, and he understood it, that we had not the facilities for clarifying so as to make it for table use.

Q. You did not propose to show him that method, to show him that?

A. No, sir.

Q. And you did not propose to make a merchantable article?

301 A. Not in that sample.

Q. Did you go up to Mr. Peak and Yeager's office and have a conversation there in March of this year with Mr. Peak and Mr. Yeager in the presence of Mr. Hall and Mr. Olmstead and Mr. Harris and Stebbins?

A. I was up there at the invitation of Mr. Olmstead. I think some time along last May. I would not say whether it was in March. I cannot remember when it was.

Q. You were there?

A. I don't remember all of the gentlemen that you read over there. I know that Mr. Harris and Mr. Stebbins was there.

Q. And Mr. Olmstead?

A. I think Mr. Olmstead was there.

Q. And Mr. Peak?

A. One or both of these gentlemen.

Q. Were you there but once?

A. Well, I have been in the office several times. I remember of having a conversation——

Q. Were you there one evening?

A. Yes, sir.

Q. Were you there more than one evening?

A. I cannot tell as to that.

Q. Were these parties there?

A. Yes, sir; that I cannot possibly remember, perhaps there were more.

Q. Mr. Hall—do you remember of his being there?

A. I cannot say that I do. I know that Mr. Harris was there, and I know Mr. Stebbins was there.

Q. You do remember now that you were there and of having a conversation?

A. Yes, sir.

302 Q. Did you there state and at that time in the presence of these men that it was understood at the time that Olmstead signed this contract that unless he could raise his company here in Kansas City that he, Olmstead, was not to be bound by the contract individually for the two-thousand-bushel house, and was not to be bound by that contract?

A. I don't think I made any such statement?

Q. Did you or did you not?

A. I cannot say that I did not. I say that I don't know.

Q. Don't you know whether you said that or not? I want to know whether you said that or not. Do you know whether you said that or not?

A. I think he said he was not to be held for the two-thousand-bushel house, but was to build the one.

Q. Did you state this, unless he could raise a company in Kansas City that he was not to be bound by this contract?

A. I don't think I said that. I think I said that on the conditions already named.

Q. Did you state there at the same time, in the presence of the same men, that when Olmstead took up his pen he said on condition that he was not -o be bound personally he would sign, and that Mr. Michels said, O, yes?

A. I don't think I made that statement.

Q. Don't you know whether you said that or not?

A. I don't know whether I said it or not. I am very much convinced that I did not.

Q. Could you — any doubt of stating such a question as that whether you wert up there and told that sort of thing or not?

A. There were so many questions asked that as I was liable to be a witness in this case I did not pay very much attention.

Q. And you did not say when Olmstead took up his pen to sign that contract he said, "On condition I am not to be
303 bound personally I will sign it, and Mr. Michels said, O, yes?"

A. I don't believe I said it.

Q. Don't you know whether you said it or not?

A. I am very confident I did not.

Q. Are you willing to swear that you did not say that?

A. I am not. I will swear no further than I told you. It is barely possible. I don't believe it. They might have got that impression from the reply I made, perhaps—from the way of speaking it.

Q. Did you not say it in plain English, in exact words?

A. No, sir; I don't think I did.

Q. At the same time and place and in the presence of the same persons did you not state that the contract was a preliminary arrangement based upon your own iron-clad agreement that you would not make or show this unless you had something signed?

A. I think I explained that matter the same way I have here.

Q. Did you make that statement or did you not, please state, that this contract was a preliminary arrangement based upon an iron-clad agreement that you had not to make or show unless you had something signed?

A. I don't think I used that word preliminary. It is not a common word with me. I don't think I made that statement.

Q. Will you say whether you made that statement or not?

A. I don't think I made any such statement.

Q. Don't you know whether you made it or not?

A. I cannot say positively as to the exact words I used. I did not convey that impression in any sense.

Q. Did you not at the same place and time before the same person say that the only reason that it was insisted that Olmstead should sign this agreement was for the purpose of complying with the iron-clad agreement that you and Michels and Stebbins had made that you would not show how the goods were made
304 unless you had something signed?

A. No; I don't think I made that statement.

Q. Do you know whether you did or not?

A. I am not positive I did not; perhaps I might have misspoke myself.

Q. Do you think you could have made all of these mistakes, Mr. Rodgers, and not have known it?

A. I don't think I made any.

Q. Don't you know whether you made this statement or not?

A. No, sir; I cannot tell what answers I made to the statements you asked me.

Q. I did not ask the questions. I never saw you until I saw you in the court-house.

A. Well, those gentlemen there.

Q. You don't know whether you made the statements or not? What time did you leave here last spring?

A. I could not tell you—not without referring to some data. I cannot tell the time I did leave.

Q. You left the works down here and went away some time last spring?

A. I went to Rochester. I was at Rochester within a day or two later.

Q. Can you fix the time when that was?

A. I cannot now without some data to refer to. I don't remember just what time it was when I went away.

Q. Within a month?

A. I would say the first—sometime along the last of April or the first of May.

Q. Was it not in April?

A. I cannot say.

Q. Do you remember a conversation you had with Mr. Olmstead and Mr. Yeager in front of the Merchants' Exchange
305 two or three days before you left with reference to the taking of your deposition? You know Mr. Yeager, this gentleman here?

A. Yes, sir; I met the gentleman several times.

A. Do you remember of having a conversation with Mr. Yeager, and his telling you that he understood you had left the Rochester works down here and asked you about taking your deposition?

A. I remember of meeting Mr. Yeager; I saw him about that time; just what the conversation was I don't remember.

Q. You remember of having a conversation; you remember of meeting Mr. Yeager?

A. I think Mr. Olmstead was there; I think he was one of the parties.

Q. Now, do you remember of stating to Mr. Yeager that Mr. Michels would not try this case there in the presence of Mr. Olmstead; that Michels would not try his case as he knew he had no case; as Michels knew as well as you did that Olmstead was not to be bound personally on that agreement? That Olmstead only signed upon the express understanding that he was not to be bound?

A. I don't remember that I made any statement to any gentleman at that time.

Q. Do you remember of making that statment?

A. No; I don't remember.

Q. Did you make it?

A. I don't remember of making it. I perhaps may have made it, not in that way. It is very probable——

306 Q. It is possible that you have made the statement?

A. No. Don't put words in my mouth I did not use. I have understood all the time that Mr. Olmstead was personally responsible on that contract. If he could not get his friends to help him on the two-thousand-bushel house that was to be modified to make one-thousand-bushel. He was to build a one-thousand-bushel house. So I have understood it first, last, and all the time.

Q. Did you say to Mr. Yeager there in the presence of Mr. Olmstead that you would let him know where you might be and your deposition could be taken, and that you would swear that it was expressly understood at the time of signing that contract that unless Olmstead could raise his company that it was to be no contract?

A. I am very certain that I did not make that statement.

Redirect examination.

By C. O. TICHENOR, Esq.:

Do you know where Mr. Harris got those samples that he had before he came down in this country?

A. Mr. Harris, when he first showed me some samples—I would not be certain but I think he got them at Buffalo. He had some samples of the goods and he got some of ours. I am not certain whether I gave him the samples I got at Windsor or whether he went over himself and got them. I am not certain the first time he came. We did not have any other goods but the dry process. We did not have any other there.

Q. If you gave him any they were made by the dry process?

A. Yes, sir.

Q. How did the percentage of profits on a one-thousand-bushel house compare with those of a two-thousand-bushel house—that is, of the machinery?

A. On the manufacture of the machinery?

Q. Yes, sir.

307 *Q.* There was less proportional profits on the two-thousand-bushel house than on the other.

Recross-examination.

By JOHN C. GAGE, Esq.:

Q. Then you don't know what samples Mr. Harris brought down here?

A. I don't know what he showed.

Q. And you say you don't know whether you gave them to him or whether he got them somewhere else?

A. I don't know.

Q. Then you don't know anything about where he got those samples?

A. No, sir; I don't know whether I gave them to him or whether he got them over at Windsor. I know that he got samples made by the dry process.

Q. How do you know whether he got samples made by your process or not?

A. I can very quickly tell. I know he had the samples when he came away. I have forgotten whether he had been over the river or not.

Q. You don't know where they came from?

A. He may have got them over there, he may have gotten them at other places. He did show me the samples and said how nice they were and all about them.

Q. But where these samples came from you don't know?

A. I am not certain whether he got them from us or whether he got them across the river.

Q. What time did you go into the employ of the Rochester works?

A. Well, it was about the middle of——

By the COURT: You have gone over that.

308 RIDOUT, being duly sworn as a witness on the part of the plaintiff, in rebuttal, testified as follows:

Direct examination.

By C. O. TICHENOR, Esq.:

Q. Where do you live?

A. Just outside the city limits.

Q. How long have you been living here?

A. Little over a year.

Q. What do you do, if anything?

A. I am connected with the Rochester Grape Sugar Company.

Q. In what capacity?

A. I am foreman.

Q. Before you came here were you connected with any other grape-sugar company?

A. Yes, sir; I was with the Windsor works three years.

Q. While you were there by what process did they manufacture?
A. Dry process.
Q. You may state whether you know that a merchantable article of syrup can be made by the dry process?
A. Yes, sir; I am positive enough I can. I manufactured it three years and during that time we shipped it to Manitoba, Hamilton, to Cincinnati, and——
Q. You made it both ways, sugar and syrup?
A. Yes, sir; I have a sample here (producing a small bottle) that I can show you that was made twenty-two months ago. I would like for you to see it.
Q. That is how old?
A. Twenty-two months old. I would like for some of these experts here to taste of that and see whether they could distinguish between that and cane.

309 Cross-examination.

By Mr. YEAGER:

Q. How long have you been here?
A. I have been here—I came here on the 25th of last September.
Q. You came here from the Windsor works?
A. Yes, sir.
Q. You were there how long?
A. I was there three years.
Q. You were the expert there?
A. No, sir; I was the foreman.
Q. In what capacity are you engaged here?
A. Foreman of the works.
Q. Why did you leave the Windsor works?
A. I could get a better salary to come out here; that is why I left.
Q. You got $55 a month there?
A. Yes, sir.
Q. You came here to get $110?
A. Yes, sir.
Q. Immediately after you left Windsor I ask you if the Windsor works were not changed from the dry to the wet process.
A. Yes, sir; they could not get any one to run them.
Q. They paid you $55?
A. Yes, sir.
Q. And they let you go for the small sum of $55?
A. Yes, sir.
Q. It don't cost more than twenty or twenty-five thousand dollars to change from the wet process into the dry? It did not at Windsor?
A. Of course it would.
310 Q. They changed from the dry to the wet process and for the simple sum of $55 a month let you go and they have not been able to get another expert?
A. Yes, sir.

Q. As soon as you left they had to change from the dry to the wet process?

A. Yes, sir. There is only two men in this country that can make it.

Q. Who is the other one? He is not here today?

A. No, sir.

Q. You understand it thoroughly?

A. Yes, sir.

Q. Where does this other man live?

A. Geneva, Illinois.

Q. And you and him are the only ones in the United States who can make this syrup by the dry process?

A. Yes, sir. There is a man in the old country that can make it.

Q. But that man is not in this country?

A. No, sir.

Q. Is there a single dry-process factory in existence in the United States?

A. Not to my knowledge.

Q. There is not any in Canada now? The last one has been changed into the wet process?

A. Yes, sir.

Q. You have not started up this one yet?

A. No, sir.

Q. Are you an expert?

A. No, sir; I am the foreman.

Redirect examination.

By C. O. TICHENOR, Esq.:

Q. This factory here is by the dry process?

A. Yes, sir. We are going to make it good when we start up. We will show you, too.

311

MICHELS
vs.
OLMSTEAD.

Tried in the United States circuit court at the Oct. term, A. D. 1882.

Testimony Given on the Part of the Defendant in Rebuttal of Plaintiff's Rebutting Testimony.

JOHN HALL, called as a witness on the part of the defendant, being duly sworn, testified as follows:

Direct examination.

By Mr. PEAK:

Q. Were you present in the office of Peak & Yeager at Kansas City in March last, in which and at which place and time just men-

tioned Mr. Olmstead, Mr. Harris, Mr. Rodgers, Mr. Stebbins, Mr. Yeager, and myself were present?

A. Yes, sir.

Q. In conversation, did not Mr. Rodgers at that time and at that place, in the presence of Mr. Olmstead, Mr. Rogers, Mr. Stebbins, Mr. Yeager, and myself, state that it was understood at the time Mr. Olmstead signed the contract that unless Mr. Olmstead could raise a company in Kansas City that he was not to be bound by that contract individually?

By TICHENOR: I do not think that that is the proper way to put the question. The proper way is to ask him to state what he said.

Objection sustained by the court; to which ruling of the court the defendant duly excepted at the time.

Q. Just state what the conversation was—what Mr. Rogers said that night with reference to the personal liability of Mr. Olmstead on this contract.

A. My recollection is that the attorneys, Messrs. Peak & Yeager, asked him to state under what condition Mr. Olmstead signed that contract. He said Mr. Olmstead objected to sign that contract,
that he was not able himself to build a two-thousand-bushel
312 house, and they told him then and there that they should
not bind him unless he formed a company; that he was not binding himself under any circumstances, but that he signed the contract as a preliminary matter for the purpose of seeing the operation and manufacture of this material. That is my recollection of it.

Cross-examination.

By Mr. TICHENOR:

Q. Where was that meeting?

A. At Mr. Peak's office.

Q. They were both present, Peak and Yeager?

A. Yes, sir.

Q. They were working up evidence in the case?

A. I presume so.

Q. You were there in what capacity?

A. Mr. Tichenor, I went there with my friend, Mr. Olmstead.

Q. You knew what you were going there for?

A. Yes, sir.

Q. And watched very closely, did you, so as to be able to tell six months afterwards just what was said? I want to know.

A. Mr. Olmstead—we had regarded it as a very weak thing in his character—he asked me to come down and see. He said these three men that made that contract would tell under what circumstances he signed it.

Q. You had all the men up there—Stebbins, Rodgers, yourself, Mr. Olmstead, and the two lawyers?

A. We were all there.

Q. Rodgers said that Olmstead talked about wanting to build a one-thousand-bushel house, did he?

A. Well, I do not know what Stebbins said.

Q. I said Rodgers, not Stebbins. If I said Stebbins I meant Rodgers.

313 A. I do not know that there was anything said about a one-thousand-bushel house. I don't remember that there was.

Q. Do you remember everything that was said by Rodgers?

A. No, sir; I do not suppose I do. I tried to remember it, because I wanted to know the inside facts in this case.

Q. You, Mr. Hall, remember that portion that is beneficial to Mr. Olmstead; you do not remember that portion that is beneficial to Michels?

A. I do not look at it at all in that way.

Q. You just remember that portion that the attorneys call your attention to?

A. I think I could tell a good deal more of it.

Q. Did he say anything of Olmstead talking about a one-thousand-bushel house when he went to Detroit?

A. I do not remember anything about that.

Q. What is your best recollection as to whether he said Olmstead talked at all about building a one-thousand-bushel house?

A. I do not remember as there was anything said about building a one-thousand-bushel house.

Q. How did they come to speak about a two-thousand-bushel house?

A. They were talking about how that contract was obtained.

314 —— HARRIS, recalled as a witness on the part of the defendant, being duly sworn, testified as follows:

Direct examination.

By Mr. PEAKE:

Q. State to the jury if you were present at this conversation in my office in March, 1882.

A. I was.

Q. State what statements Mr. Rodgers made at that time with reference to the personal liability of Mr. Olmstead under this contract and the circumstances under which it was signed.

By TICHENOR: That won't do.

By PEAK: Just state in your own way what Mr. Rodgers said at that time as to the personal liability of Mr. Olmstead under this contract and the circumstances under which it was signed.

A. He said it was definitely understood that this was a preliminary contract; that Mr. Olmstead was not to be held responsible under this contract if the company was not formed.

Cross-examination.

By Mr. TICHENOR:

Q. How did you happen to be there that night?

A. I went up there at the solicitation of Mr. Olmstead.

Q. Mr. Olmstead?

A. Yes, sir.

Q. You had a meeting there to discuss and get up the testimony in that case?

A. I do not know whether they called it a meeting for that purpose or not.

Q. What was the meeting for at that lawyer's office?

A. Mr. Olmstead said, I want you to go up to Messrs. Peak & Yeager's office. Mr. Stebbins — Mr. Rodgers are going to be there. I want to see if you all understand this contract business alike.

315 Q. He wanted to have them there to see if they all understood it alike?

A. They were to see if they understood it alike.

Q. You say that Mr. Rodgers said that this contract executed by Mr. Olmstead was merely a preliminary contract?

A. Yes, sir.

Q. Did you not hear Mr. Hall say something about a preliminary contract when he was on the stand?

A. I do not know whether Mr. Hall said anything about a preliminary contract or not.

Q. Was there anything said about a one-thousand-bushel house at that time by Mr. Rodgers?

A. Yes, sir; there was something said by Mr. Rodgers about a one-thousand-bushel house.

Q. Let us have it.

A. Mr. Rodgers said, as I understood it, that if this two-thousand-bushel-house company could not be raised that they were to fall back. I remember that he used that remark—Mr. Michels was to fall back on the one-thousand-bushel house.

316 GEO. P. OLMSTEAD, as a witness in his own behalf, testified as follows:

Direct examination.

By Mr. PEAK:

Q. Were you present at this conversation in my office in March last?

A. Yes, sir.

Q. State to the jury what statement Mr. Rodgers made that night about your liability on that contract that was signed by you and Mr. Michels and in regard to the circumstances under which it was signed.

A. He said I was not to be held individual- responsible on that contract; I was not to be held on that contract unless a company

was formed. He also said that when I took the pen to sign it I said, "Gentlemen, with this understanding, that I am not to be held individually responsible, I sign this paper;" then he said Michels said, O, yes, sir.

Cross-examination.

By Mr. TICHENOR:

Q. This statement was not true of Rodgers, was it? He did not state it right, did he?

A. About the way it was stated?

Q. Yes, sir.

A. Well, I do not know as that was the language used, but that meant the substance.

Q. Well, even if it was the substance, it was not right, was it?

A. The substance of the statement?

Q. Yes, sir.

A. That I was not to be held responsible; that was correct; that was right.

Q. You stated just a few moments ago that he said that you were not to be held responsible on that contract unless the com-
317 pany was formed.

A. He did state it substantially in that way.

Q. It was untrue?

A. That I was not to be held responsible?

Q. It was untrue that you were not to held responsible in any event?

A. No, sir; I was not responsible.

Q. Because you were not to be held responsible in the event whether the company was formed or not.

A. No, sir; I was not to be held.

Q. You heard Mr. Harris' testimony that Mr. Rodgers said that in case your friends did not come to time or the corporation was not formed that then you were to fall back on the one-thousand-bushel house. Is Mr. Harris — or not correct?

A. That I was to fall back on that? Rodgers' attention was called to that point, I think, by Mr. Stebbins, about that one-thousand-bushel house, and Rodgers—yes, sir; I think there was something said about that.

Q. Did he not say, just as Mr. Harris has stated on the stand, that in case your friends did not come to time or the corporation was not organized then you were to fall back on the one-thousand-bushel house?

A. Rodgers' attention was called——

Q. Just answer my question, yes or no. Did he state it just as Mr. Harris has testified on the stand?

A. Perhaps, substantially.

Redirect examination.

By Mr. PEAK:

Q. In what connection did he state that—how did that come up?
A. It came up from the remark that Mr. Stebbins made. Stebbins said he was present at the time that conversation came up
318 and called Mr. Rodgers' attention to that, and Rodgers said, Yes; I believe there was something said about the one-thousand-bushel house. That is my recollection of it.

319 The letters referred to in said testimony are in words and figures as follows:

J. Michels' machine works, corner Fort and Beaubien streets.

A specialty of grape-sugar machinery. Complete works erected and operated and results guaranteed by our new dry process; also by the ordinary starch process.

DETROIT, MICH., *Mar. 26th*, 1881.

Geo. P. Olmstead, Esq., Kansas City.

DEAR SIR: We chanced to run across the two enclosed letters today & I enclose them for your perusal, that you may make "assurance double sure" that there will be no question about this going through as soon as you are ready to go on in accordance with our arrangements. I am anxious to get to work as I think it of great importance that we get in ahead of the other concern if they do go on and am looking each mail for word from you to come on to close with the Co.

I have an experienced draughtsman at work on the plan of the building and it is promised by Tuesday next. I would thank you to return the enclosed letters as I may want to use them in the future.

Trusting I shall hear from you soon, I am,
Very respectfully yours,
J. MICHELS.
S.

320 J. Michels' machine works, corner Fort and Beaubien streets.

A specialty of grape-sugar machinery. Complete works erected and operated and results guaranteed by our new dry process; also by the ordinary starch process.

DETROIT, MICH., *April 7th*, 1881.

Geo. P. Olmstead, Esq., Kansas City, Mo.

DEAR SIR: I am advised that Rogers is in your City and endeavoring to bring you and your Co. to think that I am unable to complete my contract and produce the goods as guaranteed and to induce your people to join the Rochester Co. Now I have every reason to believe that you are a man of good judgment and it will be only necessary for me to call attention to his talk with you when here & the fact that he drew up the contract him-

self to convince you that he is a bad man to take stock in. I know whereof I speak and am ready at any *y*ime to go on with the contract whenever you say the word. Not only that but I am anxious to get to work, and I don't ask any more than the confract calls for until the goods are produced as per agreement. The course he (Rodgers) has taken in his dealings with me are enough to satisfy any straight man as to what he is. His advice to put in only a 1,000-bushel house is like Hamlin offering to sell his works. He don't want opposition. He has proven his lack of confidence in himself in more ways than one and I assure you any important discoveries he may claim to have made are of no account whatever. He has yet to produce his first good goods alone and when it comes to the point he will find there are men who don't tell all they know. So don't allow yourself or your friends to be frightened by what he may say and whenever you say the word I will come on for final arrangements.

321 Trusting I may hear from you soon I am
Yours truly,
J. MICHELS.
S.

I would like to meet Rodgers in the presence of some of the parties he is trying to bulldose & we would soon see who had the long end of the rope.

J. MICHELS.
S.

322 J. Michels' machine works, corner Fort and Beaubien streets.

A specialty of grape-sugar machinery. Complete works erected and operated and results guaranteed by our new dry process; also by the ordinary starch process.

DETROIT MICH., *April* 11, 1881.

Geo. P. Olmstead, Esq., Kansas City.

DEAR SIR: It is now over a month since your contract was made and I have waited patiently since mine of the 28th Ult (14 days) each mail expecting something from you. As yet have nothing. And it is important very important that we get to work. We have little enough time at best to get this through before cold weather sets in and you can well see the importance of my getting through my work before that time. Now I am willing to make due allowance for your trouble in connection with your fire and also a reasonable delay in consequence of the death of your friend Deardorf, but it does seem that a month ought to be ample time in which to get matters straightened out and by this time you should be able to say just what position you propose to take in the matter. I am as I said ready to go on just as agreed at any moment. Now, if you have not already done so try and get your men together and have this matter decided and let me know what I am to expect & when

I am to come on and make final arrangements and commence work. Your early attention will oblige

Yours truly, J. MICHELS,
S.

323 J. Michels' machine works, corner Fort and Beaubien streets.

A specialty of grape-sugar machinery. Complete works erected and operated and results guaranteed by our new dry process; also by the ordinary starch process.

DETROIT, MICH., *April 19th*, 1881.

George P. Olmstead, Kansas City, Mo.

DEAR SIR: Your favor of the 16th is received carefully read. In reply will say that you are certainly mistaken when you say that I admitted in the presence of yourself and any one else that you were to have this machinery at 15 per cent over its actual cost, I will say this that I did not understand the case to be such, only to apply on Engine, boilers & platform elevator, and Mr. Rogers telegram that I got from him that day mentioned the same & you must recollect that when you was talking about the 15 per cent that I in presence of Mr. Hall Leach & Harris my reply it was simply this that I would not agree to do anything of the kind. Then you called Mr. Harris in to your back office for a private talk & I left your office and staid outside for quite a while. finally I stepped to the door and called Mr. Harris out in reference to something that I cannot recall to my memory at present. While we were talking outside you came out and spoke of the matter & asked me if I would take $15,000 for my provid above the cost of the machinery I told you I came out in complience of my contract and not to answer questions & said if you expect what you now claimed you should have got it into the contract. Now Mr. Olmstead the above is my recolection of any answers to your questions & I know of no others. You claimed that there was about $40,000 dollars in this contract I told you that if I could not $20,000 or $25,000 dollars on a contract like that I should not come to Kansas City to put it up for less. Now Mr. Olmstead this thing you must certainly remember & not tell me that I admitted your statement.

324 Now Mr. Olmstead as a compromise on this matter I will take $20,000 as a provid and you pay me a fair compensation to superintend the job & furnish a competent man to look after the matter during its erection of the works & I will wave $81,160 00 part of the contract. This amount is less than Rogers got for his one year time from the Rochester Company & as for Rogers he is no more to me & I would take no more notice of him than would of any worthless thing & if I ever shall meet him at your City I shall give him a setting out as I have meny facts that has come to light & one sufficient to send him to States prison. But such rascles will escape punishment and how it is the R. C. take so much stock in is a mistery to me unless it takes a dirty man to do dirty work & I think they will get ther full moneys

worth before the get through with him, as he is neither a man of no moral principle about him & far from being a machanic or an expert as he claims to be & the Kansas City folks will find it to be so. All that Rogers knows and can talk about is of theory but not practice & he is very careful & not give any refference wher he has been imployed & any business dealings that he may have had. He has certainly established a most ignominious reputation with me, and though I shall keep him before the public as long as I could so at the same time give him rope enough he will hang himself.

Now Mr. Olmstead I hope the inclosed proposition will meet your views, as I want this matter plesently settled & get this job of my hands. I have the plans all finished ready for execution. Should this meet your approval wire me a message & I will come & get matters in good shape for all.

Yours truly, J. MICHELS.

325 J. Michels' machine works, corner Fort and Beaubien streets.

A specialty of grape-sugar machinery. Complete works erected and operated and results guaranteed by our new dry process; also by the ordinary starch process.

DETROIT, MICH., *April 25th*, 1881.

Geo. P. Olmstead, Esq., Kansas City.

DEAR SIR: Having heard nothing from you in reply to my last to you bearing date April 19th I drop you this to say that I am not ready to proceed with my part of the contract and wish to know just what position you propose to assume in the matter. I have gone to too much trouble & expense in the matter to let it drop and two months have nearly passed now & nothing done and it must assume some definite shape at once.

Awaiting your reply, I remain—

Very respectfully yours, J. MICHELS, S.

326 J. Michels' machine works, corner Fort and Beaubien streets.

A specialty of grape-sugar machinery. Complete works erected and operated and results guaranteed by our new dry process; also by the ordinary starch process.

DETROIT, MICH., *April 27th*, 1881.

Geo. P. Olmstead, Esq., Kansas City.

DEAR SIR: Yours of the 25th inst. this a. m. to hand & carefully noted. I wrote you the same day which undoubtedly reaches you this morning.

Now I will say once for all that it is useless to talk longer about this 15 % business. I am positive that I made no admissions of this kind and had I understood anything of this kind I never would have contracted on that basis. I stated a positive price for which I would put in the machinery & complete the works (with the excep-

tion of the buildings foundations &c. &c.) and guarantee certain results in accordance with the conditions of our written agreement and I knew of no other arrangement except as regarded the boilers engines and platform elevator—which I said you were at liberty to purchase where you chose & at what price you chose and I would deduct them from my contract. Now I hold that if you understood anything different from this you should have brought it up at the time and not at this late day nor even as late as when I was in your city. Now how could you expect me to think that Rogers would have made any different arrangement than the written agreement—which is all I know anything about or did know anything about—when he (Rogers) drew the contract himself and you read it over and signed it in the presence of Mr. Rogers. Then again Rogers telegrams which I received from him while in your city will bear me out in this. I have already written you repeatedly
327 that I am ready to go on according to my agreement and I certainly cannot see how you can claim that I am ready or trying to take advantage of you and right here let me ask—Suppose you should have found that *that* I would lose money on this do you think you would have come out & said, Here Michels we don't want to see you lose money on this. Tell us exactly what this cost & we will allow you a profit of 15 % for your trouble. Then you must bear in mind that 35 % of this is left back till the goods have been produced and here you must admit that I am taking a larger risk than you. Now if you have found any one who will put this machinery in complete ready to produce the goods for $40,000 you have a chance to make $21,000 clear. You can pay me $20,000 as per my letter of the 19th inst. and I will allow you to buy your machinery where you choose. I know you can't do it and so does every other man that knows anything of the cost of machinery and what is required in a works of this kind. As to the building you must certainly be mistaken as I never heard Rogers say anything less than a seven-story building. It would cost you more to handle your goods in a 5-story building than the extra investment & interest on it for a seven story. Rogers has of course left me but he has by no means given the thing away as according to his own story he gets $26,000.00 for one year's services in superintending the construction of and starting the works, and as you knew these works were to go up anyway it can have little effect on ours different from what we expected except that we no longer control Rogers. This I cannot help. Now I want to ask you one more question. Why did you not bring up this question of the 15 % at our meeting in the hotel? You will undoubtedly remember your telling me before this meeting was held the course you would pursue before these other men which would be to say to them "that while you considered the price for the machinery high, yet they must take into consideration the fact that I was guaranteeing results and the- could not expect me to put this machinery in without
328 a good round profit and give such guarantee." And this you did say to them in my hearing. Now I don't want to have any trouble in this matter but it must be brought to a focus one

way or the other. I cannot waste any more time and all this correspondence and talk is useless. Now it looks to me as though the best thing for you to do is to get your men together and put this to them in the right light deal out your stock and get to work? Your $40,000 man is a second Devers and either does not know what is needed or does not know the cost of machinery, is to be polite about it equivocating.

Now the two propositions are before you. Which will you accept. A message accepting either & saying you are ready to commence will bring me on and time is precious. Awaiting your early reply I am,

Very respectfully yours,

J. MICHELS,
S.

329 J. Michels' machine works, corner Fort and Beaubien streets.

A specialty of grape-sugar machinery. Complete works erected and operated and results guaranteed by our new dry process; also by the ordinary starch process.

DETROIT, MICH., *May 22d*, 1881.

G. P. Olmstead, Esq., Kansas City, Mo.

DEAR SIR: I am somewhat surprised to hear from Mr. Stebbins on his return from your city the position that you have taken since you wer her. Now Mr. Olmstead don't you underestimate my business ability while at your city, in saying that I omitted the fact that you mention in your letters wher it would be in direct disadvantage & damaging to me & disregardfull of the contract in one sense of the view to set up any such weeke minted admission as that against me, & if you will show your friends your contract & tell them this fact they would certainly think me out of my boy trades. Now sir, it will be fully as cretebl for you to represend this just as it is & it will look far more in accordence of your contract than other wise.

Yours truly, J. MICHELS.

330 APRIL 15, '1.

Mr. J. Michels.

DEAR SIR: I was very much surprised to receive a letter from you some days ago wherein you wanted a profit of $25,000 when Rogers positively agreed with me that the machinery was to be put in at the lowest cost as low as money would buy it. It begins to look as though you folks had deceived me and you know that if my signature was obtained by such means it will not hold? I was offered vacuum pans this morning for from $600 to $800 each the party said 8 foot pans would cost about $600. If you are ready to carry out Rogers pledges to me please let me know. We are to have a meeting to night at the Lindell. You know you were to get your profits out of the enterprise by a big salary for your secret but not out of the machinery.

Yours truly, GEO. P. OLMSTEAD.

331 A fragment of a letter, the rest of it not being among the files of this court:

the whole and the cost would be what you claim it a little over $81,000. You know the highest profit you were to have was 15 % and that only when you could meet our figures. You told me you charged Mr. Rogers to not make any statements but what were strictly facts yet when I show you what he promised you seem to ignore it entirely, does not this look as though you were ready to take advantage of whatever he may have done while you were partners. There was one other statement made by him that does not seem to agree with your notions He said 5 stones & about 57 to 75 or 80 feet. Besides all this you don't controll the secret now & therefore it now cannot be so valuable as when you three were partners. You know you represented Rogers Stebbins & yourself & I understand Rogers has already given it away to one party. I only want what is right and as we agreed are you satisfied with that?

Yours truly, GEO. P. OLMSTEAD.

332 *Defendant's Evidence.*

In U. S. Circuit Court.

GEO. P. OLMSTEAD
vs.
JACOB MICHELS. } In Chancery.

Now comes defendant and files herein the following evidence (the rest of the evidence being filed by plaintiff):

1. Deposition of B. L. Harris.
2. Deposition of W. S. Smith.
3. Letter of March 23, 1881, from Geo. P. Olmstead to Jacob Michels.
4. Letter of May 11, 1881, from Geo. P. Olmstead to Jacob Michels.
5. Part of evidence of Rogers not offered by plaintiff.

C. O. TICHENOR,
Att'y for Def't.

Said deposition of B. L. Harris is in words and figures as follows:

Deposition of witnesses produced, sworn, and examined on the — day of September, 1882, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at the law office of Peak & Yeager, at Kansas City, in the county of Jackson and State of Missouri, before me, Robert E. Ball, notary public within and for said county and State, in a certain cause now pending in the United States circuit court, western division of the western district of Missouri, between Jacob Michels, plaintiff, and George P. Olmstead, defendant, on the part of the defendant.

B. L. HARRIS, of lawful age, being produced, sworn, and examined on the part of the defendant, deposeth and saith: My name

is B. L. Harris, aged 45 years. My residence is in Winfield,
333 Kansas. In March, 1881, I resided in Kansas City. I was then engaged in working up the glucose business. I am acquainted with Jacob Michels and C. T. Rogers. I first met them at Michels' machine shop, in Detroit, in November, 1880. I know George P. Olmstead—have known him about a year and a half.

Q. Were you interested with Mr. G. P. Olmstead in an endeavor to raise a company for purpose of manufacturing syrup from corn in Kansas City, Mo., some time in Feb. or March of 1881?

A. I was.

Q. State the commencement of that enterprise.

A. I had a talk with Michels and Rogers about adopting this dry process for the Rochester Grape Sugar Company before I saw Mr. Olmstead.

Q. Where was that?

A. At their works in Detroit.

Q. What arrangement, if any, had you with Michels and Rogers in reference to raising a company for the manufacture of syrup by the dry process?

A. If I could get the Rochester people to adopt this dry process I was to have a certain per cent. of the contract price for putting up machinery, &c., provided Rodgers and Michels got the contract of putting in the machinery.

Q. What understanding did you have with Michels and Rodgers with reference to an interest in the enterprise when you attempted to raise a company here in which Olmstead was to be interested?

A. I was to have 15% of the profit on the contract for the machinery.

Q. State what you did here in reference to raising the company.

A. I went down to Mr. Olmstead's with Mr. Devers and we
334 figured with Olmstead, showing him the profits of the business. He said if things were as we represented that he would take hold and put some money in it. I told him I had talked with a few other men who would put money in it. I then called a meeting at the Lindell hotel; it was about the last of February, 1881. There were present Mr. Willard, Mr. Leach and Mr. Olmstead, Mr. Chase, Winn, Devers, and myself. At the meeting, after explaining this business, these gentlemen all agreed to put in money if it was as I represented. This was the first meeting. All the parties named agreed to put in from $2,000.00 to $5,000.00. We had another meeting of the same parties in less than a week. We met then to organize the company; that was the understanding when we adjourned before. I had a sample of the syrup furnished me by Michels and Rogers, and I exhibited it at both meetings as a sample of the syrup that could be manufactured by the dry process. When we were getting ready to organize Olmstead raised the objection to organizing such a company without knowing more of the business, all being strangers to it. It was then proposed by the meeting that Mr. Olmstead should go with Mr. Devers and myself to Detroit to see these goods made and negotiate for the manufacture of them.

Q. Had you prior to that time stated to Mr. Olmstead or the company who the parties were that possessed the secret of this dry process?

A. I had told them Michels and Rogers.

Q. State what occurred after that.

A. Olmstead, Devers, and myself went to Detroit the second or third day after our last meeting. I introduced Olmstead and Devers to Michels, Rogers, and Stebbins, and told them that
335 I had brought Olmstead to see this process.

Q. State what arrangements, if any, existed between Michels, Rogers, Stebbins, and yourself in reference to erection of works for the manufacture of syrup by this dry process.

A. The arrangements for this proposed company were made after I got to Detroit. I had a talk with Michels and Rogers alone and told them that these people didn't want to build larger than a thousand-bushel house, if any; but they both said it would be better to build a two-thousand-bushel house, for our profits would be a larger percentage.

Q. State what your profit was to be on this contract, if formed, and what relations Rogers, Stebbins, and Michels bore to each other.

A. My profit was to be 15 % of the profits in the contract. They conveyed the idea to me all the while that Michels was to furnish the machinery and Rogers was the expert. Stebbins and Rogers were experimenting together on this dry process.

Q. After having that conversation with Michels and Rogers with reference to the two-thousand-bushel factory, state what was done.

A. I talked to Olmstead about it and he said it was all right. He thought we could put up a two-thousand-bushel house as easily as a one-thousand; that was all the conversation that I had with Olmstead until the time of signing the contract.

Q. State who were present and all that was said and done at the time of signing the contract in suit.

A. It was on Saturday evening, I think, before supper. Mr. Michels, Mr. Rogers, Olmstead, and myself were in the back office of Michels' factory in Detroit. Olmstead said something about seeing the goods made after all this talk. Rogers said they had
336 made a positive rule not to show the process to any one until they had signed a contract to put up works. Olmstead said something about not having a contract, and Rogers said that "we have a contract already drawn up," and he either took it out of his pocket or out of the drawer. I think Olmstead took it to read and Rogers said, "Let me read it; it's in my handwriting." Rogers read it aloud and Olmstead said he couldn't sign any such contract; that he had no authority to sign it for the company. Olmstead asked, "Why have you this drawn up for Michels and me alone?" Rogers said, "Michels will sign for us and you can sign for the Kansas City people."

Q. Was anything said by Olmstead at the time about the amount of the contract?

A. Olmstead said it was an enormous price. The Rogers said he (Olmstead) could buy the machinery himself.

Q. State if Olmstead made any objections to signing the contract as a personal contract.

A. Olmstead said, "I can't sign this contract personally," and either Rogers or Michels said (I think it was Rogers) that if he couldn't raise the company they wouldn't hold him responsible. Olmstead then signed the contract. (Here the witness is shown the contract marked "Exhibit A," filed with defendant's answer.)

Q. Is that the contract signed at that time?

A. Yes, sir.

Q. State what occurred between the parties after the signing of that contract.

A. Michels then said to Olmstead and myself, "You may go to your hotel and draw a contract as you think the Kansas City people would like and Rogers and I will draw a contract as we would
337 want it for the company;" then that they would meet us in Kansas City the next week and help organize this company and have a contract signed finally. This was on Saturday night, and on Monday they made syrup for us by this dry process.

Q. State who was present when this syrup was made.

A. Olmstead, Michels, Rogers, Stebbins, and myself went into the laboratory together.

Q. Where was Devers at that time?

A. He was at the hotel. They wouldn't allow him to be present at the time the goods were made.

Q. Did they know, then, that Devers had come there with you and Olmstead?

A. Yes, sir.

Q. State if Devers had had any experience in this manufacture of glucose before.

A. He had. He organized the company and built the first glucose works at Leavenworth and claimed to be an expert in the starch process.

Q. After the contract was signed, state whether Michels came to Kansas City and for what purpose.

A. Michels came to Kansas City the next Sunday morning. He and Rogers were to meet us there to help organize the company and make a permanent contract.

Q. Did Rogers come?

A. No; Michels came alone.

Q. State, if you know, what had become of Rogers or what Michels said had become of him.

A. He said he expected to have met Rogers here. He then said that he supposed he was in Rochester. Michels then tele-
338 graphed to Rogers to know why he wasn't here and if he would come. I saw one despatch in which Rogers said he thought he would be here on Tuesday.

Q. State whether or not Rogers had made any contract with any other company.

A. He stated to me afterward that he was figuring with the

Rochester Company at the time we were in Detroit. Within a few days after Michels came here Rogers came out here in the interest of the Rochester Grape Sugar Company.

Q. State if he is not now and has not been for some months past engaged by the Rochester Company.

A. He showed me a contract with that company by which he was to have sole charge of erecting the Rochester Company's works and putting in this dry process for them.

Q. When did his engagement with that company begin?

A. It was in the early part of the spring, 1881.

Q. State what efforts, if any, Michels made while here to organize this company.

A. On Monday after the Sunday Michels got here I called a meeting of those interested in the project and Michels said he did not know what to do without Rogers, but it was uncertain about his coming and he couldn't wait for him. At the meeting Mr. Leach spoke and said the machinery cost twice as much as it ought to; that if that was the way it was to be figured he didn't care to interest himself with it. This first created the talk about the expensive machinery and they spent the rest of the day figuring on the price of the machinery.

Q. What did Michels say when Leach objected that the machinery was too high?

339 A. He said they hadn't got near all the machinery specified in the contract that they would need in drawing it hastily, and they put in price enough to cover the deficiency. I had the refusal of the old Gillis house to put the works into, and when Michels looked the building over he thought if wouldn't answer. The man who owned the building was to take $5,000.00 in stock if we took the building. Mr. Willard said he rather thought he would wait before going into it. Mr. Deardorff was to have been a member of the company, and he had died in the meantime, and we failed to form a company.

Q. State if you had any conversation with Michels while he was here at that time in reference to this contract of Mr. Olmstead.

A. I did. I think it was on Tuesday after Michels came we were down to Olmstead's office. I told him I didn't think we could raise the company and carry the thing out. He said that he had a contract and would hold Olmstead to it.

Q. Was anything else said about the contract with Olmstead?

A. I told him that he could not do it—hold Olmstead—because it wasn't a final contract, as I understood it. He said he had the contract and should hold him to it, at any rate.

Q. State whether you know whether the sample of syrup which you brought with you to Kansas City for the purpose of forming this company was manufactured by Michels and Rogers by this dry process.

A. No, sir; it was not. Mr. Rogers told me afterwards that they had prepared several samples, and this was one of the glucose samples manufactured by the starch process.

Q. State, if you know, by whom that sample was manufactured.

A. Rogers told me it was some of the Hamlin goods—manufactured at Hamlin's Buffalo works.

340 Q. State what was said to you by Michels and Rogers about the manufacture of that sample before you brought it here and what representations you made to the parties here who were proposing to form the company.

A. I asked them for some samples to bring and show these people what could be done by the dry process, and they gave me these two that I brought out here, and I am satisfied that they were not made by the dry process, though I didn't know it at that time. I represented that this sample that I showed the people here was the goods that we could make by the dry process.

Q. What representations were made by Rogers and Michels, before this contract was signed, to Olmstead and yourself in reference to the advantages of the manufacture by the starch process?

A. They said they could produce from two to five pounds more of syrup from a bushel of corn by this process than by the starch process and at a less expense.

Q. State if there was anything said about the difference of time in the conversion by this process and by the starch process.

A. They claimed that they could convert the meal into syrup every 24 hours, and by the other process it requires 72 hours.

Q. State if you have had any experience in the manufacture of the goods.

A. I am not an expert in the manufacture.

Q. Have you seen any of the goods manufactured by the dry process?

A. Yes.

Q. State if, in your judgment, it is a merchantable article.

A. It is not.

341 Q. Have you a letter from Michels dated about September 8th, 1882, in which he speaks of this contract with Olmstead?

A. I have.

Q. Please produce the letter.

(Here the witness produced the letter, which is herewith filed and marked Exhibit "A" and made a part of this deposition.)

Q. Are you acquainted with the handwriting of Michels?

A. I am.

Q. Is the letter here filed in Michels' handwriting, and is it in answer to a letter written to Michels by you?

A. It's his handwriting, and is in answer to a conversation I had with him and not a letter.

Q. State when Olmstead first became aware of the fact that you were to be interested with Michels and Rogers in the contract that might be made for the erection of works for the manufacture of syrup.

A. I think it was Saturday night after the contract was signed and after we went to our hotel.

Not being able to complete the taking of said deposition by reason of the lateness of the hour, I adjourn the further taking of the same until tomorrow, then to be continued at the same place and between the same hours mentioned in the annexed notice.

[SEAL.] ROBERT E. BALL,
Notary Public.

Pursuant to adjournment as above stated on the 22nd day of September, 1882, between the hours of nine o'clock in the forenoon and six o'clock in the afternoon, at the place aforesaid, I
342 continued the taking of said deposition as follows, viz:

B. L. HARRIS, in continuation of his deposition commenced yesterday, on his oath further says:

Cross-ex.:

Q. State your business and how long you have been engaged in it.

A. I have been in the milling business until two years ago, when I organized the Rochester Grape Sugar Company, since which time I have been in the glucose business.

Q. It was in connection with this Rochester Co. business that you first got acquainted with plaintiff?

A. Yes.

Q. What had you to do with the Rochester works at Kansas City?

A. I assisted in erecting the building at Kansas City.

Q. Was that after or before you made this visit to Detroit with the defendant?

A. It was after the visit.

Q. Isn't it a fact that these Rochester works were erected to make syrup by the process here in controversy?

A. Yes.

Q. You are charged here in the amended answer of defendant with having been in a conspiracy with Rogers, Stebbins, and plaintiff to cheat and defraud the defendant; there is no truth in that charge, is there?

A. No, sir.

Q. State whether or not, as far as you are concerned in this dealing with the defendant that you have spoken of, you were honest and open.

A. I was.

Q. The defendant wasn't satisfied to enter into a contract either upon your statement or from looking at the samples shown
343 by you, but insisted on going and seeing the syrup made, did he not?

A. The balance of the men who were interested were not satisfied to take my statement, as I was a stranger to them, until some one had gone to see the syrup made.

Q. You had made no attempt to conceal from the defendant any interest that you might have in the construction of the works?

A. No, sir.

Q. When you told the defendant of your interest at Detroit he made no objections?

A. No, sir.

Q. Defendant saw this syrup made by this process mentioned in the contract sued on, did he not?

A. He did.

Q. Did he seem to be satisfied with it?

A. He did at the time.

Q. This process mentioned in the contract sued on is the dry process, isn't it?

A. Yes.

Q. How do you know that the syrup contained in the samples you have mentioned was not made by the dry process?

A. Because, in the first place, I have never seen any goods by the dry process that they have shown me which were such goods as these, and, in the second place, Mr. Rogers admitted to me after we were together in the Rochester Co. that these goods were mixed with the Hamlin or glucose goods made by the starch process.

Q. Was there ever any difference between the appearance of the syrup made by the two processes?

344 A. There is a marked difference.

Q. State the difference.

A. The dry-process goods are not as clear, they cloud up very quick after standing, while the starch-process goods will remain clear.

Q. So you didn't need to have Rogers tell you that these samples were not made by the dry process after you had seen syrup made by that process?

A. No, sir.

Q. The matter of the personal responsibility of the defendant was talked of by him before he executed the contract you have spoken of?

A. Yes, sir.

Q. He mentioned the fact, didn't he, that he had no authority to sign so as to bind the people at Kansas City?

A. He said he had no authority to sign such a contract, because there was no company as yet.

Q. Why was it that plaintiff and his associates refused to divulge the secret for making this syrup until the contract was signed? What reason did they give to the defendant?

A. They gave as a reason that there had been so many men there to talk with them about putting up works and wanting them to show the process that they had made a positive arrangem-*tn* that they would not show the process until somebody became responsible for the construction of works.

Q. Did I understand you to say that syrup could not be made by the dry process?

A. No, sir.

Q. Was this contract that's sued on read over to the defendant before it was signed by him?

345 A. It was read over for all of us—defendant read it first and then Rodgers read it aloud.

Q. Before signing the contract the defendant spoke about the prices being high, did he not?

A. Yes; about its being an enormous sum.

Q. Wasn't it a fact that these parties failed to incorporate for the reason that the cost of the works was too great? Wasn't this matter of expense the thing about which they disputed and finally broke up?

A. That was what first lead to an investigation.

Q. Investigation of what?

A. About constructing the works.

Q. What did the investigation consist of?

A. It lead to this, that Michels was here without Rogers, the expert, and that Olmstead was told by Rogers that he could have the privilege of buying all the machinery that he wanted to—and Michels claimed after he got here that that wasn't the fact; that he could buy all the machinery that he saw fit to buy. That first lead those who proposed putting in money to investigate the matter.

Q. How long was it after Michels came here before the Kansas City people concluded not to incorporate?

A. A part of them backed out on Wednesday after the Sunday Michels arrived.

Q. When was it that Olmstead got home from Detroit?

A. He and I got back on Thursday morning, I think, after the experiment at Detroit. Michels got here the Sunday following.

346 Q. When did you have the first meeting?

A. On Monday after Michels got here.

Q. When was the next meeting?

A. We didn't have another regular meeting. We were together—two or three—at different times.

Q. Why was it that you didn't have another meeting?

A. These first men backing out was on Tuesday. Michels and myself then figured to Olmstead the next day down in his office. I think we were down twice.

Q. Wasn't there a good deal of dissatisfaction expressed at the first meeting?

A. Yes, sir.

Q. About what?

A. First, because Rodgers wasn't here. Michels seemed so put out because Rogers wasn't here that it created a talk, and about the cost of the machinery. This all lead to the break up.

Q. You speak of an investigation. I don't understand you. Say what that investigation consisted of and when it was made.

A. The talk I mentioned is what I mean by the investigation.

Redirect examination:

Q. In your cross-examination you state that the Rochester works here were erected for the purpose of manufacturing syrup by the

dry process. Please state how long those works have been completed.

A. About five months.

Q. Have those works manufactured any syrup by the dry process and are they now manufacturing by that process?

A. No, sir.

Q. You state in your cross-examination that syrup may be manufactured by the dry process—in your judgment can a mer-
347 chantable quality of syrup be manufactured by that process?

A. My judgment is, that it cannot.

Q. Did Michels and Rogers or either of them reveal the secret of this dry process to you and Olmstead at Detroit or did they merely manufacture syrup in your presence by that process?

A. They only manufactured it; they told us nothing.

Q. State if any samples of the syrup then made were furnished either to you or Olmstead by Michels or Rogers.

A. Yes. We brought back three or four bottles of that syrup.

Q. Do you know what changes, if any, have occurred in this syrup since it has been in your possession, and how it has turned out?

A. I think on Friday, of the week Michels was here, I showed Ridner & Baker, grocers, these samples, and asked them what they thought of the goods. They said they couldn't use such goods at all. Then in about two weeks after this I took down a bottle from the shelf and found that the syrup had clouded and turned brown. I tasted it and found that it had an oily, bitter taste. I kept that bottle, perhaps, two weeks longer, and when I threw it away there was a sediment in the bottom looking like brown sugar or something of the sort.

Q. State if, in your judgment, syrup of that quality was merchantable.

A. No, sir.

Q. How much stock were you to take in the proposed company, if it had been formed?

A. $5,000.00.

Q. In your cross-examination Mr. Tichenor asked you if defend-
ant spoke of his personal responsibility before signing the
348 contract sued on. Please state all that was said about his personal responsibility at that time.

A. I don't remember anything that was said except that he said he thought he could build a thousand-bushel house himself.

Q. What, if anything, was said about Olmstead's willingness or unwillingness to become personally liable on this contract or of the intention of Michels and Rogers to hold him personally liable in case he signed it?

(Objected to by plaintiff as leading.)

A. Before Olmstead signed this he said it was too large; he couldn't sign it. Rogers then said, If the company isn't raised we won't hold you personally responsible.

Recross-ex.:

Q. At the time of this experiment these parties showed you and Olmstead the way the syrup was manufactured?

A. Yes; we saw the process of the manufacture.

Q. Wasn't the object of this experiment to show the defendant the process of manufacturing this syrup?

A. No; that wasn't the whole object.

Q. State the whole object.

A. The whole object, as I understood it at the time, was to show us that they could manufacture these goods by the dry process, as they had told me.

Q. Did the defendant ask any questions during this experiment?

A. Not while I was present. I don't think he did. I was
349 not in the laboratory all the time.

B. L. HARRIS.

Subscribed and sworn to before me this 22nd day of September, 1882.

[SEAL.] ROBERT E. BALL,
Notary Public.

I, Robert E. Ball, notary public within and for the county of Jackson, in the State of Missouri, do certify that, in pursuance of the within notice, came before me at the law office of Peak and Yeager, in Kansas City, in the county and State last aforesaid, B. L. Harris, who was by me sworn to testify the whole truth of his knowledge touching the matter in controversy aforesaid; that he was examined and his examination reduced to writing and subscribed by him in my presence, on the day, between the hours, and at the place in that behalf first aforesaid, and his said deposition is now herewith returned.

Given at Kansas City, in the county of Jackson and State of Missouri, this 22nd day of September, 1882.

ROBERT E. BALL,
[SEAL.] *Notary Public.*

My commission expired Feb. 17th, 1886.

EXHIBIT A.

DETROIT, MICH., *Sep. 8th*, 1882.

FRIEND HARRIS: As I agreed to write you on Monday re-
350 garding the Olmstead suit, I could not do so, as I could not have an interview with my attorney here. So I had a talk with my attorney, he said that if Olmstead me-nt settlement that that was the time for me to entertain a thought of settlement. Although he said that my claims looked strong enough to stand a suit on & if it were tried in our court he would be able to say quit closely just what the result would be as I have some new evidence as to certain matter. However he said that if he me-nt settlement all right he might make an offer in the matter. Now Harris I am

willing & have admitted it to you in letter and statement made, that Olmstead was to be let off on the contract of 2,000-bushel house if his party did not ap-rove of the 2,000 B. H. & he was only holding to the one thousand at $46,000 and some hundred cannot give just the figer- as all my papers are at my lawyer's office & I am perfectly willing he should have the benifit of the same. Of course he may think that he is all safe in the matter & I think I am & the old saying is that pos-ession is nine-tenths of the law & I hold the pos-ession. However I am not disposed not to make a settlement at fair bacis & I think it will be money in his pocket time safed by consitering it so & what ever settlement will be made will not be generally known. Now if he will ta-k settlement & meet me half way I will do the same. If not all right & this must go to trial.

Yours truly, J. MICHELS.

My attorney has written to Tichenor & Warner stating to them that you — his interest of settlement.

351 Said deposition of W. S. Smith is in words and figures as follows, to wit:

Deposition of witnesses produced, sworn, and examined at the office of C. O. Tichenor, in the city of Kansas, county of Jackson, and State of Missouri, by consent of parties, before J. E. Guinotte, a notary public within and for said county and State, in a certain cause now pending in the western division of the western district of the United States circuit court of Missouri, wherein Jacob Michels is plaintiff and Geo. P. Olmstead is defendant, to be read in evidence on the part of plaintiff, C. O. Tichenor being present on the part of plaintiff, and R. L. Yeager as att'y for defendant.

W. S. SMITH, being sworn and examined on the part of plaintiff, deposeth and saith:

I live in Geneva, Ill. I am engaged in the manufacture of glucose and have been for four years in that business.

Ques. Do you understand the manufacture of glucose by the wet and the dry process?

Ans. Yes. I have worked about two years at each process—at the dry process at Walkerville, Ontario, Canada, and at the wet process at Geneva, Ill.

Ques. You may state whether or not a good, wholesome, and merchantable article of glucose can be manufactured by the dry process.

Ans. It can.

Ques. What is the ordinary yield per bushel of meal by the dry process?

Ans. I have produced thirty-seven and $\frac{3}{10}$ lbs. per bushel for a period of six months—that was grape sugar—which is a standard. It is as dense as can be made.

Ques. While you were manufacturing in Canada by the dry process how much did you manufacture a day?

Ans. About one and one-half tons.

Ques. How many manufactures are there in the United States of glucose and how many of them are in operation?

352 Ans. I am not positive as to either one, but I think there are about 28 manufactures and about seven of them running.

Ques. What is the comparative expense between the manufacture by the wet and the dry process?

Ans. Well, the dry process is undoubtedly the simplest, requiring less labor and less machinery, but I have not the figures to tell positively, to tell which, on account of the process being in different countries.

Cross-examination.

By R. L. YEAGER, Esq.:

I am superintendent in works at Geneva & have been for a little over two years. We use the wet process. I do not know who is the superintendent of the Walkerville works at Canada. I am not positive that the works there are running, but believe they are not. I believe the works at Walkerville were changed from dry to wet process. I have heard this, but do not know positively. There are no manufactures that I know of now manufacturing glucose by the dry process. I do not know anything about manufacture by dry process in Europe. I think there was one in operation at Wheeling, West Va., about one year ago. This, I think, was disbanded. I could tell the relative cost of houses and works in the two processes if I built them, but I could not where others built them.

Ques. Then I am to understand, Mr. Smith, that you will not give an estimate of the comparative costs between the manufacture by the wet & the dry process?

Ans. I would only say that I am not prepared today—I would not want to make any figures without time to investigate. I know what is wanted in each process, but I do not know the costs without investigation.

Ques. Is it not a fact that you can manufacture by the dry process from a third to a half cheaper than you can by the wet process?

353 Ans. No; not from a half to a third, but there is considerable in favor of the dry process.

It is a fact that to start a manufacture by dry process labor, machinery, and every expense connected with it would be from a third to a half less than to start a manufacture of like capacity by the wet process.

Ques. About what would it cost to change the works at Walkerville from dry to wet process?

Ans. It would cost considerable on account of the building having to be changed. Without making any figures—just making a rough estimate—I would say from $3,000.00 to $5,000.00. I should think that $1,500 would change the manufacture at Walkerville from dry to wet process and make it the same capacity—that is, only about 150 bushels a day.

Ques. Now, Mr. Smith, if the advantage is considerable in favor of the dry process in the matter of cost and a good, wholesome, and

merchantable article can be made, as you say, by that process, will you please tell me why no manufactures by the dry process are in operation and why manufactures have changed from the dry to the wet process?

Ans. Well, the advantage of the situation of the dry process has killed those that were in operation, and the only change I know of that was made was made because the party did not understand the dry process and corresponded with me; wanted I should go into partnership running a house under the dry process.

Ques. Is that the only reason you can give?

A. I had forgotten about this manufacture here. I did not know that they ever manufactured here by the wet process.

Ques. What is against Kansas City as a location for the dry process?

Ans. Nothing that I know of; only one thing that could be—that is the water, of which I know nothing about. Mr. Rideout worked under me at Walkerville; he had charge of the convertor.

354 Ques. What party was it you corresponded with in regard to partnership?

Ans. The parties at Walkerville who had the works before they were changed from dry to wet process—these parties who bought the works there and changed them; but this was before the change was made.

Ques. Mr. Smith, you come here as a voluntary witness?

Ans. Mr. Michels subpœnaed me. I came here and I do not expect any more than my expenses and pay for my time as I get at home. I get three dollars a day for an ordinary day's work. I am 26 years old.

W. S. SMITH.

Subscribed and sworn to before me Oct. 24th, 1884.

[SEAL.] J. E. GUINOTTE,
Notary Public.

STATE OF MISSOURI, } ss:
County of Jackson, }

I, J. E. Guinotte, a notary public within and for said county, do hereby certify that W. S. Smith, whose residence is in Geneva, Illinois, was by me sworn to testify the whole truth of his knowledge touching the matter in controversy, and that his deposition was reduced to writing and subscribed by him in my presence on the 24th day of Octo., A. D. 1884, between the hours of eight o'clock in the forenoon and 5 o'clock in the afternoon, at the law office of C. O. Tichenor, at Kansas City, in said county and State.

My term expires Sept. 11, 1885.

[SEAL.] J. E. GUINOTTE,
Notary Public, Jackson County, Mo.

355 Said letter of March 23rd, 1881, is in words and figures as follows:

KANSAS CITY, MO., *March* 23, 1881.

Mr. J. Michal.

DEAR SIR: Yours came to hand this a. m. I have been making some enquiries about machinery since you left. A party in the business here tells me that the 12 run stone including Hurst frames complete ready for the belts would be worth about $4,800; the bolts from $15 to $1,600. All the wooden tubs could be made here. You are in error in regard to any boiler-builders having seen or known anything in regard to your prices. I think the best way to get at this now, will be for us all to have the works built at the lowest rates that we can get, and then after they prove a success as per our understanding, add so much to the cost as will give you say $15,000 for your margin. I find the figures so ex*h*orbitantly high on many things that nobody would ever be satisfied. This will be better lay for you then our first talk—of cost and manufacturers' profit and would be fair for all. This is the way we figure (from the known to the unknown). If the known things are so high we have a right to believe that the unknown are also. And if this is true the bill is too high by nearly one-half, say 40 per cent. The bolting chests are 150 per cent. above cost. We want a fair shake and are willing that you should have a big bonus, even for a first house, but the thing looks too big now.

Yours truly, GEO. P. OLMSTEAD.

P. S.—We feel that this proposition even if it costs us exactly the same as your figures would be more satisfactory to the company & we want all satisfied so as to work harmoniously and to success.

WINN.

356 Said letter of May 11th, 1881, is in words and figures as follows, to wit:

KANSAS CITY, *May 11th*, 1881.

Mr. J. Michels:

I am willing to go ahead as agreed with Rogers as to the cost of machinery, but on no other basis.

Yours truly,

(Signed) GEO. P. OLMSTEAD.

Said deposition of Rogers is in words and figures as follows:

C. T. ROGERS, being duly sworn on the behalf of the plaintiffs, testified as follows:

Q. What is your business?
A. Mechanical engineer.
Q. How long have you been engaged in that business?
A. Off and on for 16, 18, or 20 years, more or less.
Q. Where are you engaged now?
A. I am engaged in the Rochester Grape Sugar Company.
Q. Here in Kansas City?
A. Yes, sir.

Q. Did you ever see these?

(Showing witness schedule of prices.)

A. I cannot say that I saw this particular one. I think I saw one of which this is a copy.

Q. In whose handwriting is that contract?

A. That is my handwriting.

Q. At that time in whose employ were you?

A. I was in the employ of Jacob Michaels at Detroit.

Q. Were you at Detroit at that time?

A. Yes, sir.

Q. You may state, if you know, what kind of a house. What is it called—how do you describe it?

A. It is called glucose.

Q. This contract which was made for a two-thousand-
357 bushel house, what do you mean by a two-thousand-bushel house?

A. I understand that the meaning of a two-thousand-bushel house is one that consumes two thousand bushels of corn each twenty-four hours.

Q. You may state, if you know, what at that time such a house—that is, the machinery part of it—which was called for there by that contract, could have been constructed in Kansas City.

(Objected to by defendant's counsel on the grounds that the witness is not competent to give testimony on that.)

By the COURT: Do you know the cost of machinery of that kind?

A. Yes, sir.

Q. Know the cost of it?

A. Yes; I would say I did.

By the COURT: He can answer the question.

(Mr. TICHENOR:)

Q. What would have been the cost to put up machinery as called for by that contract?

A. The actual cost?

Q. No; what a fixture of that kind could be put in for—that is, the machinery part of it.

A. I made the figures there upon that estimate and Mr. Michaels', and, I think, it was a fraction over $60,000 actual cost. I would not say as to the exact figures. I think it was a fraction over $60,000. How much, I cannot remember at this time.

Q. Did you contract these works at Kansas City?

A. Yes, sir.

Q. Is that the same kind—the wet or dry process?

A. No; this is by the dry process.

Cross-examination by JOHN C. GAGE, Esq.:

Q. Where had you been engaged prior to the time of making that contract and how?

358 A. For Mr. Michaels, of Detroit, Mich.

Q. How long?

A. I cannot say how long, but I should say, perhaps, from six to ten months; perhaps longer.

Q. What were you doing—in what capacity were you engaged?

A. Well, I was called upon in various capacities; making estimates of machinery and sometimes I would go up to the machine shop and make a pattern; or I would be sent out on the road, as well as the business of estimating contracts, drawing contracts, and so forth.

Q. What was Mr. Michels' business?

A. He was a manufacturer of machinery.

Q. What kind of machinery?

A. He manufactured various kind- of machinery—parts of sugar machinery.

Q. What portion of the machinery did he manufacture himself?

A. Well, principally the shafting and gearing. Well, I could hardly enumerate the parts. They are multitudes that might be made of the machinery.

Q. What kind of a machine shop was it—large or small? Was it for the manufacture of iron and wood as well—combined?

A. No, sir; there was no particular amount of wood-work connected with the shop.

Q. It was iron and steel works?

A. Iron and steel; a regular machine shop.

Q. You had been there, you say, from six to ten months?

A. Somewheres in that vicinity; I cannot tell just how long; perhaps a little longer.

Q. A little lo*b*ger than six to ten months?

A. I would say in the vicinity of ten months.

Q. During that time you had been out of the shop on the road—a portion of the time?

359 A. Yes, sir.

Q. And working making patterns?

A. Yes; whatever I might be called upon to do.

Q. By whom?

A. By the proprietor.

Q. How extensively have you been engaged in buying and selling this kind of machinery?

A. Not to any large extent.

Q. Well, what extent, if any?

A. Not farther—perhaps I might say no further—than just in the employ of Mr. Michaels in buying the machinery with him for the Michigan Grape Sugar Company; they are in Detroit, Michigan.

Q. What kind of works is that?

A. That is for the manufacture of sugar.

Q. By what process?

A. By the starch process—the wet process.

Q. Then you have never purchased any machinery for the manufacture of this dry process?

A. No, sir.

Q. How long had you been engaged before you went to Mr. Michaels in the machinery business?

A. I had been engaged in various ways as a contracting engineer.

Q. What do you mean by that?

A. I had been engaged on water works.

Q. Where?

A. Lafayette, Indiana.

Q. Was that immediately before you went to Michaels?

A. No, sir.

Q. Just before you went to Michaels, what establishment were you in?

A. For some time before I went into the employ of Mr. Michaels I was not doing anything.

360 Q. For how long?

A. Perhaps a year.

Q. Before that year had you engaged in anything, and what did you do?

A. Part of the time I was engaged in milling—a flour mill.

Q. Where?

A. In Michigan.

Q. How long?

A. I cannot say how long myself; only a few months, however.

Q. How were you engaged before that?

A. I was engaged with Clapp and Jones, manufacturers, in Hudson, New York.

Q. What were they?

A. They were manufacturers of steam fire-engines and various other kinds of water-works machinery.

Q. How long were you engaged with them?

A. I was engaged most of the time about that time—1871.

Q. What did you do for them?

A. Most anything that came along.

Q. What did they want you to do—get you to do for them; what did you do?

A. Well, I did a multitude of things.

Q. Were you travelling? You say they made fire-engines and erected water works; were you engaged on the road travelling for them?

A. A portion of the time—not all the time. I was there with them engaged for a portion of the time in figuring and estimating for machinery.

Q. Machinery for what?

A. For water works and other different kinds, and I would be sent out on the road.

Q. What water works did you figure on?

A. Lafayette, Ind.; Hudson, N. Y.; Lancaster, Penn., and various towns.

361 Q. Before 1871 where were you, and what were you doing?

A. Well, I done a multitude of business at different times; always in machinery work.

Q. Just before that what did you do?

By the COURT: He has gone back twelve years; that seems to me a reasonable time.

Q. You say you were engaged with Mr. Michaels making these figures?

A. Yes, sir.

Q. Whose handwriting is that schedule in?

A. I judge that was copied by Mr. Stebbins.

Q. You know Mr. Stebbins' handwriting?

A. I should think it was his handwriting. I would not be ready to swear to it, because I am not an expert.

Q. You have seen him writing?

A. Yes, sir.

Q. He did most of the writing?

A. Yes, sir; he was a book-keeper there.

Q. You and Mr. Michaels made out these figures?

A. I think we did. I think those were the figures.

Q. You made an estimate of five boilers, with all appendages complete, set up. Now, what was the cost of those boilers at the shop at that time?

A. Well, that was some time ago I cannot recollect figures. I have had a great deal on my mind since that, and I cannot recollect that.

Q. You also made an estimate of three engines complete set up. What was the cost of them?

A. As I said before, I cannot recollect those things at this time; it was some time ago.

Q. How many run of stone did you estimate for?

A. I don't know that I can tell you that at this minute; it was from eight to twelve run of stone. I cannot tell just how many.

362 Q. That is, the cost of furnishing this machinery at that time has passed from your mind now?

A. Yes; it has passed from my mind as to the details.

Q. All you know is that you then thought that you could furnish it and set it up in the building here in Kansas City, and that it would be about $60,000 and a little over?

A. That is my impression of it now. My memory is quite clear as to that point, but not as to the details. There are a great many things which you cannot estimate for—for bolts and some other things. There are a multitude of little things that you cannot estimate for, but I think that the actual cost for the machinery would be between $60,000 and $61,000, but I cannot tell exactly the figures.

Q. That is your memory of what you thought then this machinery was worth?

A. Yes, sir.

Q. But it is not your actual knowledge now of what these goods would cost. You do not know what they are worth now?

A. I don't know that I can give all of them. It takes a great many things to build a sugar-house.

Q. You don't know now what items you got into that $60,000?

A. I cannot name them over to you.

Q. You don't know the value of them now?

A. No, sir; probably not, because I have not been called upon to figure on them.

Q. All you know is at that time you figured on them?

A. Yes, sir.

Q. And that then you thought that that would be about the cost of them?

A. That that would be about the actual cost.

Q. How did you get at the cost?

A. We got at the various items—the cost of the materials—and we took the figures from various parties.

363 Q. You went to somebody else to find out what they would cost?

A. Some of the things.

Q. The inquiries that you made of others and the examination of price-lists?

A. Some we had to buy ourselves, and we exchanged and got prices that way.

Q. Then it was got by the examination of price-lists, inquiries from others, and any other method a man could get at in figuring on a big contract for machinery?

A. From all the available sources we could get it to get at the actual prices.

Q. And from these inquiries and investigations you then thought it would cost from $60,000 to $61,000, and now you are not able to say from actual knowledge at the present moment what any considerable amount of this machinery would have cost then, are you?

A. Well, I think at this time——

Q. What would it have cost then or within a few months after the date of this contract?

A. I don't know that I understand your question.

Q. I say now, sitting here on the stand, you are not able to say what any considerable number of the items of this machinery would have cost then?

A. No, sir; I cannot call it to mind now.

By the COURT: If you had a list would you be able to determine what it would have cost at that time or somewhere near?

A. I would, to a certain extent, most of the things, but I cannot in detail. There are many things pertaining to a factory that you cannot specify. It is a very difficult problem.

364 Redirect examination:

Q. You say you did figure on all these things in detail at the time that list was gotten up?

A. Yes, sir; I stayed up pretty near all night for several nights—we did, Michels and myself.

Q. That was your best judgment then as to the cost? It is your best judgment now as to the cost at that time?

A. At that time I think the machinery could have been purchased and placed at a cost of between $60,000 and $61,000, although there are many items in building a sugar-house that it is impossible to figure on. Little things would come up that it was impossible to figure on; experience has taught me that.

365 The opinion of the court filed in said cause is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

GEORGE P. OLMSTEAD
against
JACOB MICHELS.

Opinion.

BREWER, *C. J.:*

Defendant commenced an action at law to recover damages for the breach of a written contract. Complainant filed this bill *the* enjoin the prosecution of that action and compel the cancellation of such *c*ontract. A brief statement of the grounds of decision is here given. The written contract is perfect in form and signed by the parties. One ground upon which the complainant rests his bill is this: That this writing, signed by the parties and apparently a contract between them, was not intended as a contract and was understood by neither of them as binding. That parol testimony is competent to show that that which appears as a perfect contract was not signed by the parties with the intention of making a contract, and that no binding obligation was assumed by either, is, we think, unquestioned. A familiar illustration is this: Suppose a gathering of young people in which a moot court is proposed for the amusement of those present and a suit for breach of promise of marriage is the case to be tried in such moot court, and a young man and a young woman for the purposes of such trial in the moot *v*ourt sign what, upon its face, appears to be a contract to marry. Would it for a moment be tolerated, if, after the evening's amusement
366 was ended, she should bring suit for damages for breach of such marriage contract, that parol testimony was incompetent to show the purposes for which the paper was signed, and that no real or binding obligations were assumed by either party in signing it? This, which is an extreme case, illustrates the principle upon which complainant rests, and we think the testimony shows that this case falls within that principle.

The facts in a general way were these: One Harris came from Detroit as a representative of defendant and two partners to work up a company here for the manufacture of glucose by the dry process. After some negotiations, several gentlemen, complainant among the number, became interested and talked of organizing a corporation for the purpose of putting up a building and engaging in such manufacture. Before any definite plans were matured, it

was agreed that the complainant should go to Detroit and see the process. In pursuance thereof he went with Mr. Harris and there met the defendant and his partners. The talk here among the parties proposing to enter into the organization was the building of a thousand-bushel house. After complainant reached Detroit, he was there three days without an opportunity to see the process. Talk was going on during these days between the parties, the suggesting the expediency of a two-thousand-bushel house. Finally, he expressed a desire to see the process before returning home, then this written contract was produced by one of three partners, and it was stated that they had agreed upon a rule that no one should see the process unless a contract was first executed. He declined to sign it, in substance saying that the parties whom he represented never talked of a thousand-bushel house, and that he had no authority to sign for them. He was told that he was not be bound personally by it, but
367 that the signature was necessary to comply with their rules, and probably from this talk this contract thus signed by him was understood to be the basis of a contract to be thereafter entered into between the three partners and the company to be formed in this place. With that understanding he signed the paper, saw the process, and came home and reported. Thereafter this defendant came on for the purpose of assisting in the organization of the proposed company, but the scheme fess through, and that not through any fault of the complainant. Of the four parties who were present at the time the paper was signed, complainant and defendant among the number, all agree that the contract as it stands was not to be binding upon the complainant. The defendant and perhaps one witness insist that complainant stated his ability to build a thousand-bushel house even if his associates failed to enter into the scheme, and insist that complainant was to be bound for a thousand-bushel house.

Inasmuch as all who were present, the complainant and the defendant among the number, agree that this contract as it stands was not to be binding, it is very obvious that the defendant ought not to be permitted to enforce it. It was not signed as and for a contract, but simply signed as an excuse and to comply with the rule of defendant and his partners in respect to the disclosure of the process, and probably also as the basis of a contract to be thereafter entered into between the defendant and the proposed company.

Neither can there be, as defendant suggests, a reformation of the contract. Both parties knew what they were signing, knew what the language of the instrument was. There was no mistake or misunderstanding in this respect, and whatever may be the truth as to the parol understanding, in reference to the building of a thousand-bushel house, it is not true that this contract by mistake
368 was written for a two-thousand-bushel house instead of a thousand-bushel house. Hence, there is no excuse for the reformation of this contract; it must stand or fall as it is written, and as all the parties agree that as written it was not to be binding as a personal contract, we thing the complainant is entitled to a de-

cree cancelling the instrument and enjoining the action at law, and it is so ordered.

369 UNITED STATES OF AMERICA, *set:*

I, Warren Watson, clerk of the circuit court of the United States for the western division of the western district of Missouri, do hereby certify that the foregoing is a true transcript of the record and opinion of the court in the cause therein named, as fully as the same appears in my office.

Witness my hand as clerk and the seal of said court. Done at office in the city of Kansas, Missouri, this 26th day of November, A. D. 1890.

[Seal of the United States Circuit Court of the Western District of Missouri, Western Division.]

WARREN WATSON, *Clerk*,
By —— ——, *D. C.*

Endorsed on cover: Case No. 14,515. W. Missouri C. C. U. S. No. 100. Jacob Michels, appellant, *vs.* George P. Olmstead. Filed March 9, 1891.

157-198

FILED
NOV 14 1894
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1894.

No. 100.

JACOB MICHELS,

Appellant,

vs.

GEORGE P. OLMSTEAD,

Appellee.

Appeal from the Circuit Court of the United States for the Western District of Missouri.

BRIEF FOR APPELLANT.

JOHN D. CONELY,
Of Counsel for Defendant and Appellant.

POTTER PRINTING CO., DETROIT, MICH.

IN THE

SUPREME COURT OF THE UNITED STATES

JACOB MICHELS *Appellant,* *vs.* GEORGE P. OLMSTEAD, *Appellee.*	}	No. 100.

BRIEF FOR APPELLANT.

The appellant, Jacob Michels, brought suit in the Circuit Court of the United States for the Western District of Missouri, against the appellee, George P. Olmstead, for breach of a contract entered into by said George P. Olmstead with said Jacob Michels, by which Michels was to furnish and put in a building to be erected by said Olmstead, in Kansas City, Mo., the necessary machinery and appliances to operate a plant for the manufacture of glucose from corn-meal, by what is known as the "dry process," of a sufficient capacity to manufacture two thousand bushels of corn-meal into glucose every twenty-four hours, and for which Olmstead was to pay Michels the sum of $81,160.00.

The appellee, Olmstead, as defendant in such suit, attempted to show by way of defense to said suit, that at the time said contract was made and signed, it was agreed that said contract was not to be binding on said Olmstead, and that there was no intention of binding said Olmstead at the time said contract was made. This, he was not allowed to show: Judge Brewer, rendering an opinion on the objection to the evidence, from which we take the following: "This paper is in express terms an agreement between the parties, and it cannot be shown by parol not to be an agreement. I do not think this can be done. As in the case cited, where a party signs a note, he cannot be heard to say in law that it was not a note. It is contrary to the very foundation of the rule in case of contracts to allow that to be done. There may be some other cases. Of course a man may show a contemporaneous agreement which does not conflict with the terms of a written contract. As in a case which came before us when I was a member of the Supreme Court of Kansas. In that there was an agreement to purchase back at a certain time, and which was in no way in conflict with the written contract of sale. Such an agreement, it was held, could be enforced in a court of law. In that case the law was laid down very distinctly that it could not be shown by parol, that there was no contract. There is no question about it that if a contract be complete you cannot show by parol that there is no contract. You may show that it is to become operative upon the performance of certain conditions; in escrow, depending on an event to happen; but there is no condition of that kind here. It is not in escrow. You cannot show that the party is not to do a thing he has promised to do in writing. When a man contracts in writing to take certain property it cannot be shown by parol that he was not to take it. When he promises in writing to pay for machinery it cannot be shown by parol that he was not to pay for it. The

contract is expressed in the instrument he signs. If it shows that what he signs was an agreement, such evidence is not competent. That is the very purpose of having it in writing. That writing is the best evidence of what the contract in fact is, and parol testimony is not admissible to show that it was not an agreement."

Olmstead then, during the pendency of said suit, before final judgment therein, filed a bill in said court in equity to restrain said action of law, and praying that said contract might be declared null and void.

THE BILL stated that "George P. Olmstead, a citizen of the State of Missouri, brings his bill of complaint against Jacob Michels, a citizen of the State of Michigan, and shows to the court that: On the 5th day of March, 1881, the defendant of the first part, and your orator, of the second part *entered into a contract or agreement in writing in the words and figures as follows:*

(The cotract is then set forth in full. Rec., pp. 2-4.)

"That *by the terms of said contract defendant bound himself* to furnish and set up and put in operation in a suitable building, to be furnished by your orator in the city of Kansas, in the state of Missouri, all the necessary machinery for manufacturing syrup, commonly called glucose from Indian corn by dry process of sufficient capacity to manufacture two thousand bushels of corn into syrup each day of twenty-four hours, and the *defendant agreeing and guaranteeing* to your orator, that such machine so to be furnished and put in operation should by said process produce a yield of thirty-two pounds of syrup from each bushel of corn, and that the syrup so produced should be of forty-two degrees density of Beaume saccharometer, and also to furnish at a salary in said contract stated, an expert to manage said manufactory as long as required by the company or corporation which your orator and others associated with him were then about to organ-

ize, the building to be furnished by your orator for the above purpose, with a suitable water supply, and your orator to furnish all brick and stone work, foundations, supports, and a suitable chimney, and also all materials and labor required to start said works in operation, such as corn, coal, boneblack, filter, cloths, chemicals and labor, *and on the part of your orator that he should pay therefor to the defendant the sum of eighty-one thousand one hundred and sixty dollars*, fifteen per cent. thereof when demanded by defendant, and fifty per cent. thereof on the arrival of said machinery at said Kansas City, Missouri, or in case a part of said machinery should arrive at said Kansas City in advance of other parts of said machinery, then in that case, your orator should pay on the arrival of such parts a sum which should bear the same ratio to the whole fifty per cent. of said cost price, as the value of the part so arriving should bear to the value of the entire machinery, as such values were fixed by said schedule attached to said contract; *and your orator states that it is true that he did not keep and perform on his part any of the terms or stipulation of said contract contained, for the reason that said contract and your orator's signature were obtained by defendant by false and fraudulent representations made by defendant to your orator for the purpose of inducing your orator to sign said contract.*" The bill then sets forth the alleged fraudulent representations.

In said bill, said complainant alleges that Michels fraudulently *represented* that Olmstead was not to be bound by said contract, but this does not seem to be set up as an independent allegation—but only as part of the allegations tending to show fraud, the sole basis for relief being the alleged fraudulent representations, by which complainant was induced to enter into the contract. He alleges that there was no "dry process" for manufacturing

syrup from cornmeal to the profit and advantage stated by defendant, or to any profit whatever, and that said Michels at the time of signing said contract knew there was no such process; that the prices of machinery mentioned in said contract were grossly and outrageously extortionate and excessive, and that complainant therefore, disavowed and refused to carry out said contract, or any part thereof. (See bill, pp. 5-7.)

A decree was made in said cause declaring said contract null and void, and perpetually enjoining Michels from prosecuting said action at law for the breach of the contract. This injunction was granted, and said contract was declared null and void by the circuit judge, on the ground that both parties had agreed said contract was not to be binding upon said Olmstead; in fact, was not to be a contract at all, but was a mere nothing signed by the parties without any intention on the part of either that it should be binding upon either of them. The learned judge, in the opinion filed by him said: "this writing signed by the parties, and apparently a contract between them, was not intended as a contract, and was understood by neither of them to be binding." And further, in his opinion, "inasmuch as all who were present, the complainant and defendant among the number, agree that this contract as it stands, was not to be binding, it is very obvious that the defendant ought not to be permitted to enforce it. It was not signed as and for a contract."

Record, pp. 218 and 219.

The allegation of fraud in said bill, the ground on which relief was asked, does not seem to have been sustained at all, and the injunction was granted and the contract declared null and void on the sole ground, as stated in the opinion, that "the contract was not signed as and for a *contract*."

We submit that the *case made by the bill is not sustained by the proofs, and that the ground of decision in no manner follows the case made by the bill.*

THE BILL alleges a complete contract, but charges that it was obtained by fraudulent misrepresentations. The *ground of decision* is that the parties agreed it was not to be a contract.

We submit the evidence does not support the finding of the learned Circuit Judge. Olmstead admits that he read the paper, and knew what it contained. (Record, p. 74.) And there is no evidence in the record that Michels was not to be bound by the contract, if Olmstead had not broken faith, and Michels always claimed that it was a binding contract with the verbal modification noted. Charles B. Leach, a witness on the part of the complainant, testified that "Michels claimed that it did bind." (Record, p. 113.) Mr Stebbins testified: "with certain modifications he was to carry out *this contract.* The modifications were, that if his friends would not join him, he was to be ready to build a one thousand bushel house. *That he was to carry out the contract with certain modifications.*" (Record p. 147.) And Michels testified to the same effect. (Record, pp. 47, 48.) This fact is also borne out by the correspondence between Michels and Olmstead. (Record, pp. 192, 193, 194, 195, 196, 197, 198 and 212,) and is certainly in accordance with reason and common sense.

Furthermore, Olmstead, when he was attempting to back out of his contract, offered a compromise with Michels, "to give him a margin of fifteen thousand dollars," and wrote him to that effect. (Record, pp. 83, 84 and 212.) Before signing the contract he had the sum named as the salary of the expert changed from eight thousand to seven thousand dollars per year, and also had the time for which said expert was to be employed, changed from five years

to "such a time as they should want the services of the expert." (Record, pp. 84 and 85.)

If this contract was not to be a contract, if it was to be a mere nothing, why should Olmstead have cared what it contained; why would he have had the salary and term of the expert's employment changed? It could make no difference what the contract contained if it was not to be binding, it would only be a piece of paper and it could make no particular difference what was written upon it.

And too, why should he offer to compromise—to give Michels a margin of fifteen thousand dollars if he was not bound by the contract? (Record, pp. 83, 84, and 212.) Michels would not be entitled to anything if it was not a contract, and Olmstead would not have offered to compromise unless he knew it was a binding contract.

The learned judge, in his opinion says: "Inasmuch as all who were present, the complainant and defendant among the number, agree that the contract as it stands was not to be binding, it is very obvious that the defendant ought not to be permitted to enforce it. It was not signed as and for a contract." And it was upon that theory that the injunction was made permanent. We do not think, however, that the facts support this theory. The record shows that Olmstead claimed at the time, immediately after getting home, that he was being overcharged—that Michels' profits were too large; that Michels claimed and insisted the contract was binding, that it was entered into with the intention of making a binding contract, but that it was further agreed that if certain of Olmstead's plans miscarried, that is, if certain of his friends failed to come to his support he would sell him a smaller plant for a less sum, a one thousand bushel house for forty-six thousand three hundred and sixty dollars and ten cents.

This was not put into the contract however, and was a mere verbal agreement and consequently could not be shown in evidence to vary the terms of the writing.

Bass vs. Bank, 101 U. S., 96 and 97.
Dewitt vs. Berry, 134 U. S., 315 and 316.
Martin vs. Cole, 104 U. S., 30.

In order to support the decree and opinion it must appear beyond dispute that both of the parties *at the time* this contract was signed, agreed that it was not to be a contract, that it was to be a mere farce, a piece of paper on which there was writing, without that writing meaning anything whatever. Any other theory will not support the decree. If they signed this contract, intending it to be binding, (even though there were certain verbal modifications or terms not incorporated in it,) it is binding, and Olmstead cannot now be heard to say that he did not intend to be bound by it; or if it was agreed at the time of signing the contract that if certain conditions arose, Olmstead was to be let off with a smaller plant at a smaller sum, and they failed to insert this in the original contract, the writing itself must govern, for otherwise parol evidence would be allowed to govern the written instrument, and this we submit is not allowable.

We urge that the evidence plainly shows a *complete verbal contract* precisely according to the terms of the written contract sued on, with a further provision that in a certain event, the price and size of the plant were to be reduced. *The minds of the parties met upon a complete verbal bargain. The parol evidence simply shows that one provision of the verbal contract was left out of the writing.* It would be contrary to the plainest rules of evidence to now allow Olmstead to show that this writing did not contain the entire bargain.

Bast vs. Bank, 101 U. S., 96 and 97.

DeWitt vs. Berry, 134 U. S., 315 and 316.
Martin vs. Cole, 104 U. S., 30.
Murphy vs. Fiske, 131 Mass., 110.
Van Vichten vs. Smith, 59 Iowa, 173.
Sickler vs. Fox, 51 Mich., 92.
Coots vs. Farnsworth, 61 Mich., 497.
Best vs. Ling, 73 Wis., 243.
Hastetter vs. Anman, 119 Ind., 7.
Gordon vs. Nieman, 118 N. Y., 152.
Carleton vs. Vineland, 33 N. J. Eq., 466.
1 Greenleaf on Evidence, Sec. 275, and cases cited.
Ward vs. Lewis, 4 Pick., 520 and 521.
Black vs. Lamb, 12 N. J. Chy., 118 and 119.
Worral vs. Munn & Prall, 1 Selden N. J., 229.

In these last three cases the rule is laid down, that where a deed is delivered it cannot afterwards be shown by parol evidence that it was delivered upon conditions to be performed, as that would be contrary to the terms of the instrument; and in *Ward vs. Lewis*, it is stated that to permit parties to a deed purporting to be absolute to show by parol evidence that it was conditional, and to avoid it for non performance of the condition, would be a violation of the fundamental principles of evidence.

Ward vs. Lewis, 4 Pick., 520.

And in *Worral vs. Munn & Prall*, it was held that you could not show it even in equity.

Worral vs. Munn & Prall, 1 Selden, N. J., 238.

In the case at bar Olmstead had read the contract and knew what it contained; he fully understood the meaning of the instrument, and he signed and delivered it as and for a contract, and it was accepted by Michels as a contract, and we submit that it was not competent to allow Olmstead to show by parol that he did not in end to be bound by the writing or that it was signed and delivered with an additional stipulation, that in a certain event there was to be a change of size and price.

We further urge that equity had no jurisdiction.

If the written contract was a mere form with no intention on the part of either to make a contract, then such facts (if permissible to be shown at all) would be a good defense at law as well as in equity. There was no fraud. Olmstead was a good business man. He signed after full and careful consideration. The sole claim was that it was not to be a contract. If this is a defense at all it was such at law, and certainly we ought to have the right of a trial by jury on such questions. No excuse exists for the interposition of equity.

Conceding that Olmstead claims the writing was not to be a contract, yet there was evidence tending to show the contrary, viz: That it was to be a contract and that a certain additional provision or modification was omitted from the writing.

If the former (or Olmstead's) claim is true, concede for the moment it may be a good defense. If the latter is true, it is not a good defense, because it is not permissible to show such modification by parol.

Ought we not then to have the right of a trial by jury of this question of fact. Upon what principle of equity

jurisdiction is relief afforded? The allegations of fraud are not and cannot be reasonably sustained. Therefore, the groundwork of the bill falls, and nothing is left but the bare question whether a contract (of some kind) was intended or a mere sham, which is triable at law and is a proper question for a jury.

We submit the decree should be reversed and the bill dismissed.

JOHN D. CONELY,
For Defendant and Appellant.

Office Supreme Court, U. S.
FILED.
NOV 21 1894
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

JACOB MICHELS, *Appellant,*
vs.
GEORGE P. OLMSTEAD, *Appellee.*

No. 100.

Statement and Brief for Appellee.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

JACOB MICHELS,
Appellant,
vs.
GEORGE P. OLMSTEAD,
Appellee.

No. 100.

STATEMENT.

Appellant commenced an action at law to recover damages for the breach of a written contract. The contract upon which said action is based is in words and figures as follows (Record, p. 2):

"Memoranda of agreement made and entered into this fifth day of March, A. D. 1881, by and between Jacob Michels, of the city of Detroit, county of Wayne, State of Michigan, party of the first part, and George P. Olmstead, of the city of Kansas City, county of Jackson, and State of Missouri, party of the second part, whereby it is mutually agreed as

follows, to-wit: That the party of the first part will furnish to the party of the second part all necessary machinery for manufacturing corn into syrup (commonly called glucose), by a dry process, so termed; said machinery shall be of a sufficient capacity to manufacture two thousand bushels of Indian corn into the above mentioned syrup per day of twenty-four hours. The said party shall set said machinery in a proper manner and ready for operation in a building to be furnished by the party of the second part, as hereinafter provided. The party of the first part shall furnish a manufacturing expert to start said works, and hereby guarantees that the said machinery shall have a capacity as above stated, and shall produce a yield of thirty-two pounds of syrup per bushel of corn. After said works have been put into operation the party of the first part shall furnish the party of the second part an expert or manufacturing superintendent for such a time as the company want the services of said expert, at least five years, and a ..... for the interest of the first part from the time said works are in successful operation and goods produced as guaranteed; and the party of the second part shall pay to the party of the first part a salary of seven thousand dollars per year, said salary to be paid to the party of the first part monthly, or to his order.

"The party of the second part will furnish to the party of the first part suitable buildings to place said

machinery in and shall also furnish all brick and stone work, foundation supports, etc., also a suitable chimney, also a suitable water supply, all of which shall be located at Kansas City, Mo.

"For the said machinery, and the setting up of the same, and guaranteeing yield as before specified, the party of the second part shall pay to the party of the first part the sum of eighty-one thousand one hundred and sixty dollars ($81,160.00), to be paid as follows, to-wit: Fifteen per cent of the whole amount to be paid to the party of the first part on demand, and fifty per cent. of the whole amount shall be paid as soon as all the machinery arrives at Kansas City, Mo. But should a part of said machinery arrive at Kansas City, Mo., in advance of other parts, a like per cent. shall be paid upon said machinery, in accordance with a schedule price hereto attached.

"The party of the second part shall furnish all materials and labor required by the party of the first part to start said works, such as corn, coal, hone black, filter cloths, oils, chemicals, labor, etc., and the manufacturing superintendent shall at all times have exclusive control of said works.

"The party of the first part shall not receive any further pay than is above stated, and a failure to produce a yield as above specified shall forfeit the balance due the party of the first part; but when the guarantee shall be fulfilled, then the party of the

second part shall pay to the party of the first part the remaining thirty-five per cent, as follows: a twenty per cent interest in the said works and the balance in cash.

"The syrup made shall be of a density of 40 degrees by a Baume saccharometer scale.

"J. Michels.

"Geo. P. Olmstead."

Said cause was reported in 14th Federal Reporter, page 219. After a mistrial of said action at law, the appellee filed a bill in equity to enjoin the appellant from the further prosecution of said action at law and to compel a cancellation of said written contract. By stipulation between the parties (record, p. 17), it was agreed that the evidence taken by the reporter, in the action at law in the case of Michels and Olmstead, might be written out by the reporter and used by either party in the trial of the bill in equity.

The cause was heard before his Honor Judge Brewer, then of the Circuit Bench, and his Honor Judge Philips, then of the District Bench.

After hearing the evidence in the cause and the argument of counsel, his Honor Judge Brewer, rendered the following opinion (Record, p. 218):

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

George P. Olmstead
against
Jacob Michels.

Opinion.

"Brewer, C. J. :

"Defendant commenced an action at law to recover damages for the breach of a written contract. Complainant filed this bill to enjoin the prosecution of that action and compel the cancellation of such contract. A brief statement of the grounds of decision is here given. The written contract is perfect in form and signed by the parties. One ground upon which the complainant rests his bill is this: That this writing, signed by the parties, and apparently a contract between them, was not intended as a contract, and was understood by neither of them as binding. That parol testimony is competent to show that that which appears as a perfect contract was not signed by the parties with the intention of making a contract, and that no binding obligation was assumed by either, is, we think, unquestioned. A familiar illustration is this: Suppose a gathering of young people in which a moot court is proposed for the amusement of those present, and a suit for breach of promise of marriage is the case to be tried in such moot court, and a young man and a young

woman, for the purposes of such trial in the moot court, sign what, upon its face, appears to be a contract to marry. Would it for a moment be doubted, if, after the evening's amusement was ended, she should bring suit for damages for breach of such marriage contract, that parol testimony was competent to show the purposes for which the paper was signed, and that no real or binding obligations were assumed by either party in signing it? This, which is an extreme case, illustrates the principle upon which complainant rests, and we think the testimony shows that this case falls within that principle.

"The facts, in a general way, were these: One Harris came from Detroit as a representative of defendant and two partners, to work up a company here for the manufacture of glucose by the dry process. After some negotiations, several gentlemen, complainant among the number, became interested, and talked of organizing a corporation for the purpose of putting up a building and engaging in such manufacture. Before any definite plans were matured it was agreed that complainant should go to Detroit, and see the process. In pursuance thereof, he went with Mr. Harris, and there met the defendant and his partners. The talk here among the parties proposing to enter into the organization was the building of a 1,000-bushel house. After complainant reached Detroit he was there three days without an opportunity to see the process. Talk was going

on during these days between the parties, they suggesting the expediency of a 2,000-bushel house. Finally he expressed a desire to see the process before returning home. Then this written contract was produced by one of the three partners, and it was stated that they had agreed upon a rule that no one should see the process unless a contract was first executed. He declined to sign it; in substance saying that the parties who he represented never talked of a 2,000-bushel house, and that he had no authority to sign for them. He was told that he was not to be bound personally by it, but that the signature was necessary to comply with their rules; and probably, from the talk, this contract, thus signed by him, was understood to be the basis of a contract to be thereafter entered into between the three partners and the company to be formed in this place. With that understanding he signed the paper, saw the process, and came home and reported. Thereafter this defendant came on for the purpose of assisting in the organization of the proposed company, but the scheme fell through, and that not through any fault of the complainant. Of the four parties who were present at the time this paper was signed, complainant and defendant being among the number, all agree that the contract, as it stands, was not to be binding upon the complainant. The defendant, and perhaps one witness, insist that complainant stated his ability to build a 1,000-bushel house, even if his

associates failed to enter into the scheme, and insist that complainant was to be bound by this contract for a 1,000-bushel house. Inasmuch as all who were present, the complainant and the defendant among the number, agree that this contract, as it stands, was not to be binding, it is very obvious that the defendant ought not to be permitted to enforce it. It was not signed as and for a contract, but signed simply as an excuse, and to comply with the rule of defendant and his partners in respect to the disclosure of the process, and probably also as the basis of a contract to be thereafter entered into between the defendant and the proposed company.

"Neither can there be, as defendant suggests, a reformation of the contract. Both parties knew what they were signing—knew what the language of the instrument was. There was no mistake or misunderstanding in this respect; and whatever may be the truth as to the parol understanding in reference to the building of a 1,000-bushel house, it is not true that this contract by mistake was written for a 2,000-bushel house, instead of a 1,000-bushel house. Hence there is no excuse for the reformation of this contract; it must stand or fall as it is written; and, as all the parties agree that as written it was not to be binding as a personal contract, we think the complainant is entitled to a degree cancelling the instrument and enjoining the action at law; and it is so ordered."

The case is now here on appeal from this judgment.

BRIEF AND ARGUMENT.

The judgment, from which this appeal is taken, is so manifestly just and equitable, that it is difficult to conceive upon what possible ground it can be reasonably assailed. The action at law, enjoined by the decree, was based upon a written instrument which was never designed or intended by the parties to operate as a contract. Indeed, it was expressly stipulated and agreed, at the time of its execution, that the appellee should not be bound by its terms; that his signature was attached to the instrument, not for the purpose of assuming any obligation upon his part, or to confer any right or benefit upon the appellant, but solely and alone for the purpose of complying with the rule adopted by appellant and his partners in reference to admitting strangers into their laboratory to witness their process of manufacturing glucose. The undisputed evidence in the case shows that the written instrument in question was executed under the following circumstances, to-wit:

One B. L. Harris, at the instance and suggestion of appellant, was endeavoring to organize a company to be incorporated in Kansas City, Missouri, for the

manufacture of glucose by the dry process; in pursuance of this design, he spoke to the appellee and several other persons in Kansas City, in regard to his project, and by his flattering account of the profits to be derived from the manufacture of glucose by the dry process, he succeeded in inducing them to subscribe about forty thousand dollars to the stock of a company to be formed, provided, they were satisfied, after an investigation, of the feasibility and desirability of the organization of such a company. A meeting of those interested in the proposed organization was called for the purpose of consultation and advice, and at this meeting, it was stated by Harris that the secret of this dry process was known to the appellant, Michels, who lived at Detroit, Michigan; and this meeting appointed the appellee, Olmstead, a committee to visit the appellant at Detroit, in company with Harris, and investigate the process of making glucose, ascertain the terms upon which the secret would be imparted by the appellant, and report to their associates in Kansas City for further action.

The undisputed evidence further shows, that when the appellee and Harris reached Detroit, they informed the appellant of the object of their mission, and explained to him fully that they came to investigate the process of making glucose, and to report the result of their investigation to their associates in Kansas City, who were contemplating the organiza-

tion of a company for the purpose of manufacturing glucose by the dry process; that they came merely for the purpose of investigation, and were not authorized to make a contract. After two or three days of conversation on the subject, the appellee suggested that he would like to witness the making of glucose by their dry process, so that he could make a report to his associates in Kansas City; and upon report to his associates in Kansas City; and upon this suggestion, Mr. Rogers, who was an associate and partner of the appellant, produced the written instrument in controversy, and presented it to the appellee, stating to him, at the time, that he and his associates had adopted a rule that they would permit no one to see the process by which they manufactured glucose until a contract had been signed for the erection of glucose works, and that he would have to sign the contract before he could witness the process. Thereupon the appellee informed both Rogers and the appellant that he was not authorized by those whom he represented to sign a contract, and that the contract called for a 2,000-bushel house, whereas they had only discussed a 1,000-bushel house, and that he could not and would not sign the contract. Thereupon Rogers informed the appellee, in the presence and hearing of the appellant, that he, the appellee, should not be personally bound upon the contract; that in case the company was not

formed, and his friends would not stand by him, that he, the appellee, should not be personally bound by the contract. Thereupon the appellee remarked, that with the understanding that he should not be personally bound upon the contract, he would sign it. These are the undisputed facts. Thus far all the witnesses agree. The appellee, the appellant, Rogers, Stebbins and Harris, the only witnesses to the transaction, all agree that at the time appellee signed the contract, it was expressly stipulated and agreed that the appellee should not be personally bound thereby. From this point there is some divergence in the evidence. The appellee and Harris state that this contract, besides being a mere formal compliance with the rules adopted by the appellant and his associates, was intended as the basis of a contract which should be entered into by the corporation, should one be formed; that the corporation was to have the privilege of purchasing any of the machinery mentioned in the contract, wherever they could purchase the same on the best terms, and to make such other alterations in the same as they might suggest. The appellant and Rogers state that the contract was to be adopted by the corporation just as it was written, should the corporation be formed, and if the corporation should not be formed, then the appellee was not to be bound on this contract, but that he was personally to build a 1,000-bushel house. While there seems to be some

difference between the witnesses, as to the object and purpose for which this contract was drawn, there was a perfect unanimity upon one point, that, in no event, was the appellee to be personally bound by the contract as written.

With that distinct understanding, the appellee signed the paper, saw the process, secured several bottles of the manufactured product, and returned home and reported to his associates. Thereafter the appellant made a visit to Kansas City, for the purpose of assisting in the organization of the proposed company, and spent several days in a vain endeavor to induce the parties to form a corporation and adopt the contract signed by the appellee. But the parties in interest, after a thorough examination of the manufactured products shown them, became satisfied that it was worthless and unsalable, that the dry process was a fraud and a delusion, and declined to form the corporation, and without any fault upon the part of the appellee, the scheme fell through. Thereupon, the appellant commenced an action at law against the appellee for the recovery of damages for the breach of this written contract. Afterwards the appellee filed this bill in equity, to enjoin the prosecution of said action at law, and to compel a cancellation of said written contract.

This is a brief and condensed statement of the facts and circumstances surrounding and attending the execution of this contract. It thus clearly ap-

pears, that, whatever else this written instrument may be, it certainly is not a contract between the parties, and was not designed as such. Although reduced to writing and signed by the parties, it was not their real contract; the real contract was unwritten; the real contract, the consensus or agreement of minds, that to which equity looks, was, that the appellee should not, under any circumstances, be personally bound by this written instrument. It was signed by the parties as a mere formal compliance with the rule adopted by appellant and his partners, as a mere pretext or excuse, for permitting appellee to witness the process of manufacture, and may have been intended as a basis of a contract to be entered into thereafter, between the appellant and the corporation, should one be formed.

The first question for the court to determine is, whether this written instrument, which purports upon its face to be a contract, is, in fact, a contract. And for the purpose of determining this question, oral evidence is admissible. "A document purporting to be a contract, signed by the parties, is not necessarily so, and it is competent for either party to show by parol evidence that it was not their intention in signing that it should operate as a contract, and that the real contract between them was not in writing."

Rogers v. Hadley, 2nd Hurlstone and Colman, 227.

"When, at the execution of a writing, a stipulation has been entered into, a condition annexed, or promise made by word of mouth, upon the faith of which the writing has been executed, parol evidence is admissible, although it may vary and materially change the terms of the contract."

Greenwalt v. Kohne, 85 Pa. Sta. 369.

The appellant, although admitting that he had no contract with the appellee for the erection of a 2,000-bushel house, was yet proceeding at law to secure a judgment against the appellee for $30,000.00, as damages for his failure to comply with the terms of this written instrument, an instrument which he himself admits was not a contract. He was asking a judgment against the appellee, for his failure to perform that, which appellant himself admits, he never agreed to perform.

To permit the appellant to use said written instrument for such a purpose would clearly be a gross fraud and imposition upon the rights of appellee, such a fraud and imposition as a court of equity will prevent.

Burns v. Scott, 117 U. S., p. 582.
Story Eq. Jur., Sec. 885, 886, and 881, 882.
Eden on Injun, Chap. 2, p. 3.
Waterlow v. Bacon, L. R., Sec. Equity, 514.
Hibbard v. Eastman, 47 New Hampshire, 547.
Hopkins v. Fletcher, 47 Mo. 331.
Tommey v. Ellis, 41 Georgia, 260.

Our contention is that the written instrument, sued on by the appellant in his action at law, is not a contract, and was never designed by the parties to operate as such; that it entailed no obligation upon the appellee, conferred no rights upon the appellant, and, therefore, he was properly enjoined from prosecuting his suit upon it. The authorities fully support this position.

Taylor's Evidence, Text-Book Series, Sec. 1135.
Wharton on Evidence, Sec. 927.
Rogers v. Hadley, 2nd Hurlstone & Coltman, 227.
Pym v. Campbell, 6 Ellis and Blackburn, 370.
Waite v. Harrup, 6 Hurlstone & Norman, 768.
Clever v. Kurkman , 24 W. R. 159.
Miller v. Henderson, 10 S. & R. 290.
Caley v. Phil & Chicago Rd., 80 Pa. Sta. 369.
Greenwalt v. Kohne, 85 Pa. Sta. 369.
Hoopes v. Beale, 90 Pa. Sta. 82.
Wallis v. Littell, 11 C. B. N. S. 369.
Davis v. Jones, 17 C. B. 625.
Grierson v. Mason, 60 N. Y. 394.
Julliard v. Chaffee, 92 N. Y. 529.
Cullman's v. Linley, 114 Pa. Sta. 166.
Grayson v. Brooks, 64 Miss. 410.
Olmsted v. Michels, 36 Fed. Rep. 455.

Parol evidence is admissible to contradict a written, simple contract, or to show that the whole of it was not reduced to writing; but that it was made

with certain conditions or limitations, expressly agreed upon, but not contained in the written contract.

Barker v. Prentiss, 6 Mass. 433.

Parol evidence is admissible to show that a note was delivered with the understanding that it was not to be binding unless signed by certain other parties.

Wesman v. Krumweild, 30 Minn. 313.
Robertson v. Evans, 3 S. Car. 330.
Butler v. Smith, 35 Miss., p. 463.

The object of parties in making a contract will be considered by a court of equity. It constitutes a ground for the exercise of its jurisdiction which will always be asserted to prevent fraud and oppression, and to promote justice.

Peugh v. Davis, 96 U. S. 336.
Taylor v. Luther, 2 Sumner, p. 232.
Brick v. Brick, 98 U. S. 516.
Field v. Briddle, 2 Dallas, 171.
Pawling v. U. S., 4 Cranch, 219.

But it was not seriously contended by counsel for appellant in the court below that this written instrument, as written, should or ought to be enforced. His contention then was that the instrument should be so reformed as to read a 1,000-bushel house instead of a 2,000-bushel house.

In answer to this contention we quote from the opinion of His Honor Judge Brewer (Record p. 219), which is a complete refutation of the contention: "Neither can there be, as defendant sug-

gests, a reformation of the contract. Both parties knew what they were signing, knew what the language of the instrument was. There was no mistake or misunderstanding in this respect, and whatever may be the truth as to the parol understanding in reference to the building of a 1,000-bushel house, it is not true that this contract, by mistake, was written for a 2,000-bushel house instead of a 1,000-bushel house. Hence, there is no excuse for the reformation of this contract; it must stand or fall as it is written; and as all the parties agree that as written it was not to be binding as a personal contract, we think the complainant is entitled to a decree cancelling the instrument, and enjoining the action at law."

We submit that under the evidence in this case and the authorities cited, the judgment of the court below should be affirmed.

Respectfully submitted.

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A. R. STROTHER,
of Counsel.

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IN THE

SUPREME COURT

—OF THE—

UNITED STATES.

OCTOBER TERM, 1894.

JACOB MICHELS.
Appellant,
vs.
GEORGE P. OLMSTEAD,
Appellee.

No. 100.

SUPPLEMENTAL BRIEF FOR APPELLEE.

BY JOHN L. PEAK AND
R. E. BALL.

The Sidney F. Woody Printing Co., N. Y. Life Bldg., Kansas City, Mo.

IN THE

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UNITED STATES,

OCTOBER TERM, 1894.

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Appellee.

No. 100.

SUPPLEMENTAL BRIEF.

The original brief in this case was prepared without having an opportunity of examining appellant's brief and without any intimation of the theory upon which a reversal of this judgment would be asked.

We now desire to submit a supplemental brief in response to that filed by appellant and, if possible, remove any misapprehensions which might arise from the partial and inaccurate statements contained therein.

First, it may be well to state that it is not contended by appellee that parol evidence is admissible in the Federal Courts in an action at law to contradict, vary, or change the terms and conditions of a written contract. Such courts do not permit an equitable defense in an action at law. For this reason the appellee was compelled to resort to a court of equity for his remedy.

The original suit of Michels v. Olmstead for the recovery of damages for the breach of the written contract set out in the transcript of record filed in this case was first tried before Judge Krekel, of the District Court. The same matters and things substantially were set up as a defense by the defendant in that action, which are relied upon by the appellee in his bill in equity, asking for a cancellation of that contract. Judge Krekel, following the Missouri practice, and not the practice of the Federal Courts, permitted the defendant to introduce evidence in support of his equitable defense. In consequence of a misdirection of the jury by the learned Judge there was a mis-trial of the cause, the jury failing to agree.

When the action at law was next reached, his Honor, Judge Brewer, of the Circuit Court, presided at the trial. As doubts had arisen in the minds of counsel both for the plaintiff and defendant, as to the admissibility of an equitable defense to an action at law in the Federal Court, by agreement of counsel, this question was submitted to his Honor, Judge

Brewer, as a preliminary question, before the introduction of any evidence in the case.

Upon this question, Judge Brewer, following the case of Burns v. Scott, 117 U. S., p. 582, held that an equitable defense could not be made to an action at law in the Federal Court, and that, in such action, parol evidence would be inadmissible to vary, or change the terms of a written contract. It is from the opinion rendered by his Honor, Judge Brewer, upon that question that appellant quotes an extract on the second page of his brief. After the rendering of this opinion by Judge Brewer, Olmstead, the defendant in that case, filed this bill in equity because he had no remedy at law. And because he had no remedy at law, the counsel for appellant seems hastily to conclude that he has none in equity; and most, if not all the cases, cited in his brief, are cases where an equitable defense was sought to be interposed to an action at law, or where parol evidence was offered for the purpose of contradicting a written contract, without any allegation or proof of fraud, mistake, or deceit. The cases cited are clearly inapplicable in this case, where the bill charges and the evidence discloses the grossest character of fraud. The counsel for appellant in his brief (page 5,) says: "The allegation of fraud in said bill, the ground on which relief was asked, does not seem to have been sustained at all, and the injunction was granted and the contract declared null and void on the sole ground, as

stated in the opinion, that "the contract was not signed as and for a contract."

What grosser fraud, what greater outrage could be perpetrated against the rights of an individual, than to secure his signature to a written contract with a solemn and avowed declaration that he should not be bound by its terms, and then by the machinery of the law compel him to pay thousand of dollars for his credulity! What a singular spectacle it would present if the appellant is permitted to go into the court of justice and demand and recover of the appellee thirty thousand dollars for the breach of this written instrument, saying in the presence of the court: "I secured the signature of the appellee to this contract upon my solemn assurance that he should not be bound by it; he refused to sign it unless I would give him the solemn assurance, but the rules of law are stern, inexorable and unbending, and neither I nor the appellee are permitted by its relentless decree to tell the truth about the matter! I have played my game shrewdly! I demand my pound of flesh!"

It is for the prevention of such frauds that courts of equity are organized.

Neither is it true as claimed by counsel for appellant, that the other grounds of fraud charged in the bill, are not sustained by the evidence. The fraud charged in the bill is as follows: (Record p. 5.)

"On or before said 5th day of March, 1881, and before the execution of said contract the defendant,

for the purpose of cheating and defrauding your orator and of inducing him to sign said contract and of obtaining from him a grossly extortionate price for the machinery and work of said contract and schedule mentioned, falsely and fraudulently represented and pretended to your orator that there was a certain process of manufacturing syrup from corn, known as the dry process, whereby syrup could be manufactured from corn to a much greater profit and advantage, at much less expense in machinery and labor, and in much greater quantity in proportion, to the amount of corn consumed, than could be done by the usual course and process of manufacturing sugar from corn or by any process known to any person, except defendant, and his agents; that said process was a secret known only to defendant and two other persons, one Rogers and one Stebbins, who were agents of defendant; that defendant could and would furnish to your orator the machinery mentioned in said contract and schedule, which would, when put in operation by defendant, produce syrup from corn by said dry process to such great benefit and advantage and that the prices named in said contract and schedule were the lowest prices at which like machinery could be purchased from manufacturers thereof, and that these prices were, in fact, so low that defendant would have no profit arising therefrom and would, therefore, be willing, at any time, to permit your orator to procure any of said machinery from any other source and release him from any ob-

ligation he might be under to take the same under said contract; and your orator informed defendant that he did not and never had designed or proposed to engage in the business of manufacturing syrup, individually, but only as a member of a proposed corporation, which he, your orator, and several other persons, contemplated forming, and as an agent, or committee, for whom he was then negotiating with defendant, as defendant well knew; said defendant represented to and promised your orator that if he would execute said contract, he, defendant, would permit your orator to witness, with his own eyes, the operation heretofore unseen by any person, except defendant and his said agents, Rogers and Stebbins, of manufacturing syrups from corn by the dry process and that if having seen it, your orator could return the report to said persons proposing to join with him in forming said corporation that defendants representations regarding the dry proeess were true and that your orator had seen the same in successful operation and could thereby accomplish the formation and organization of said corporation; that then the terms contained in said contract and schedule might be taken and considered as the basis of a contract to be made between defendant and said corporation and as a proposition on the part of defendant which said corporation might adopt, and that on condition said corporation should be formed and organized and should, as such corporation, adopt said contract, then, in that event, said contract should be binding

and obligatory upon said corporation and defendant; but that in no event should said contract be binding or obligatory upon your orator and in no event should your orator be individually bound and held to the performance of anything therein contained; and your orator states that under no circumstances and conditions would he have signed said contract, unless he had been positively assured, by defendant, that he should not be individually held by the terms and conditions thereof."

The bill then proceeds to charge, that complainant relying upon said representations and promises of defendant, and deceived and mis-led thereby, he executed said contract and then proceeds as follows:

"And that defendant's said representations that his design and intention in having said contract signed for the sole purpose of enabling your orator to see and witness the operation of said dry process and report the success thereof, to his associates, who, with him, were contemplating the formation of said corporation, and thereby promoting and insuring the organization of said corporation, and that said contract should only be held to be signed and delivered for that purpose, and not as a binding contract on the part of your orator, was likewise a false pretense and device of defendant, whereby he sought and intended to procure your orator's signature to said contract with a full intention of holding him bound thereby and of extorting from him a large sum of money."

Here there are two clear and specific charges of

fraud as a ground for the cancellation of said contract:

First, that the appellant represented to the appellee that the manufacture of syrup from corn by the dry process was a valuable secret known only to the appellant and his two agents, and that by this process syrup could be manufactured at much less cost and much greater profit than by any other process.

Second, that the appellant represented to the appellee that his only intention in securing his signature to the contract was for the purpose of enabling the appellee to see and witness the operation of said dry process and report the success thereof to his associates and that said written instrument or contract should be delivered and accepted merely as a proposition upon the part of appellant to the corporation to be formed, which they might accept after their formation, and that the appellee should not, under any circumstances and conditions, be held bound by the terms and conditions of said contract.

It will be seen that this second charge of fraud is not merely an incident of the first, as the counsel for appellant seems to imagine, but is a distinct and independent allegation of fraud and the main allegation upon which appellee relied for relief.

The first charge of fraud is historically connected with the second and constitutes a part of the scheme by which the appellant attempted to defraud the appellee and was, therefore, set up in the bill. Both of these charges

are fully and abundantly sustained by the evidence. The evidence clearly shows that the manufacture of syrup from corn by the dry process was not a secret known to the appellant and his partners only, but that it was a process known to all manufacturers of syrup; and that, it had proven a failure and a disappointment in every instance in which it had been attempted; that the dry process was a fraud and a delusion and of no value whatever; that the goods manufactured by such process were worthless and unsaleable. And if this charge had been the sole ground for the cancellation of that contract, the learned Judge would have been abundantly sustained by the evidence in the decree which he rendered. But, inasmuch as the court found that the written instrument signed by the appellee was never designed or intended, either by him or the appellant, to operate as a contract, this, alone, was a sufficient ground for enjoining the prosecution of said action at law and for the cancellation of said contract. It would, therefore, have been a work of supererogation for the learned Judge to have examined or discussed the evidence in support of the other grounds of fraud charged in the bill. For the same reason the counsel for the appellee did not deem it necessary to present or discuss, in their original brief, the evidence in support of the other frauds charged in the bill.

Upon every principle of equity and justice the contract ought to be cancelled because it was not signed as and for a contract and was not intended, by

either party to operate, as such. It would be a gross and monstrous fraud and imposition upon the rights of the appellee to suffer the appellant to enforce this contract in an action at law. The authorities cited by the cousel for appellant and his reasoning in support of his position might be applicable in an action at law, but are clearly inapplicable in this case.

We, therefore, respectfully submit that the judgment of the lower court should be affirmed. ;

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